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U.S. National War Labor Board

Directive orders and opinions of the National...

Washington

1942

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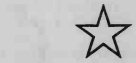
Directive Orders and Opinions

of the

NATIONAL WAR LABOR BOARD

IN THE

"LITTLE STEEL" CASE



July 16, 1942

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NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.

and

UNITED STEELWORKERS OF AMERICA, C. I. O., formerly known as STEEL WORKERS ORGANIZING COMMITTEE, C. I. O.

July 16, 1942

DIRECTIVE ORDER ON WAGE ISSUE

The directive order of the Board, as respects the wage issue in the above-entitled case, made in accordance with paragraph 3 of the Executive Order of January 12, 1942, is as follows:

(1) (*a*) As a stabilization factor to remove the inequity suffered by the employees, due to the deficiency in the change of their hourly wage rates as compared to the increase in the cost of living between January 1, 1941, and May 1, 1942, there shall be a wage increase of $0.032 per hour.

(*b*) The particular equities of the steel workers, as discussed in detail in the opinion on these cases, entitle the steel workers to an additional increase of $0.023 per hour.

(*c*) The effect of the two adjustments mentioned above is to provide the steel workers affected by the Board's order with a total wage increase of $0.055 per hour, or $0.44 per 8-hour day.

(2) In accordance with the Interim Directive Order of the National War Labor Board in this case, the total increase of $0.055 per hour, or $0.44 per 8-hour day, shall be applied retroactively to the dates of certification to the Board. These dates are: Bethlehem Steel Corporation, February 6, 1942; Republic Steel Corporation, February 7, 1942; Youngstown Sheet & Tube Co., February 10, 1942; and Inland Steel Co., February 10, 1942.

Concurring: Representing the public: William H. Davis, Chairman; George W. Taylor, Frank P. Graham, Wayne L. Morse. Representing employers: Roger D. Lapham, George H. Mead, E. J. McMillan, H. B. Horton.

Dissenting: Representing labor: Thomas Kennedy, R. J. Thomas, George Meany, Robert J. Watt.

[SEAL]

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NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.

and

UNITED STEELWORKERS OF AMERICA, C. I. O., formerly known as STEEL WORKERS ORGANIZING COMMITTEE, C. I. O.

July 16, 1942

DIRECTIVE ORDER ON UNION SECURITY ISSUE

The directive order of the Board in the above-entitled case, made in accordance with paragraph 3 of the Executive Order of January 12, 1942, is as follows:

The contract between the parties in this case shall include the following maintenance of membership and check-off provision:

"All employees who, 15 days after the date of the Directive Order of the National War Labor Board in this case are members of the union in good standing in accordance with the constitution and bylaws of the union, and those employees who may thereafter become members shall, during the life of the agreement as a condition of employment, remain members of the union in good standing.

"The company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month of one dollar ($1.00) and promptly remit the same to the International Secretary-Treasurer of the union. The initiation fee of the union of three dollars ($3.00) shall be deducted by the company and remitted to the International Secretary-Treasurer of the union in the same manner as dues collections.

"The union shall promptly furnish to the National War Labor Board and to the company a notarized list of members in good standing 15 days after the date of the directive order. If any employee named on that list asserts that he withdrew from membership in the union prior to that date and any dispute arises, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the union and the employee.

"The union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and bylaws of the union) the dispute shall be regarded as a grievance and submitted to the grievance machinery, and, if necessary, to the final determination of an arbitrator appointed by the National War Labor Board in the event that the collective-bargaining agreement does not provide for arbitration."

Concurring: Representing the public: William H. Davis, Chairman; George W. Taylor, Frank P. Graham, Wayne L. Morse. Representing labor: Thomas Kennedy, R. J. Thomas, George Meany, Robert J. Watt.

Dissenting: Representing employers: Roger D. Lapham, E. J. McMillan, George H. Mead, H. B. Horton.

[SEAL]

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.

and

UNITED STEELWORKERS OF AMERICA, CIO, formerly known as STEEL WORKERS ORGANIZING COMMITTEE, CIO

July 16, 1942

DIRECTIVE ORDER ON MINIMUM DAILY WAGE GUARANTEE ISSUE

The National War Labor Board, in accordance with paragraph 3 of the Executive Order of January 12, 1942, hereby finally determines the issues in dispute in this case as follows:

1. The following provisions shall be included in the collective bargaining contract to be entered into between the parties in the settlement of this dispute:

> The corporation agrees that each employee (except apprentices and learners) shall be guaranteed and shall receive for each day's work an amount which shall be not less than 78 cents (the minimum common labor hourly rate for the particular plant involved) mutiplied by the number of hours worked by him on that day, but if such employee's fixed occupational hourly rate is more than 78 cents, the corporation agrees and guarantees that he shall receive for each day's work an amount which shall be not less than his fixed occupational hourly rate multiplied by the hours worked by him in that day. Further, in no case shall a worker receive for a given day less than the amount earned by him as a result of the application of piecework, tonnage, or production rates.
>
> This minimum daily wage guarantee shall become effective as of the date of the directive order in this case. If any changes in the rate structure are effected as a result of this guarantee, such changes shall become effective as of the date upon which the union and companies agree upon said changes.

2. The foregoing minimum wage guarantee provision shall be applicable to each of the four companies involved in this dispute.

3. Although the Board recognizes that the adoption of the minimum daily wage guarantee principle is bound to increase to some extent the wage costs of the companies in that it will increase the weekly pay envelopes of some employees, nevertheless, it is to be understood that the negotiations between the parties over any necessary adjustments in the incentive, tonnage or piecework rates shall

proceed on the assumption that the companies will not have to bear any substantial direct additional wage costs and that the steel workers' pay for performing a given quantity and type of work will not be decreased.

In other words, it is to be expected that the changed rate structure which Bethlehem and Republic are requested to negotiate shall be so constructed as to provide for the same general ratio of labor costs to production as now exists, except for the 5½ cents per hour increase in hourly rates allowed by the Board in this case.

4. The collective bargaining agreements entered into in the settlement of all of the issues involved in this case shall not be delayed because of any negotiations necessary in adjusting the incentive, tonnage, or piecework rates in accordance with the minimum daily wage guarantee provision. If the companies and the union fail to complete within 90 days from the date of the directive order in this case whatever negotiations may be necessary in adjusting the incentive, piecework, tonnage, or production rates to the minimum daily wage guarantee provision, the adjustment of such rates on the request of either party shall be referred to the final determination of an arbitrator appointed by the War Labor Board in the event that the collective bargaining agreement does not provide for arbitration.

Concurring: Representing the public: William H. Davis, Chairman; George W. Taylor, Frank P. Graham, Wayne L. Morse. Representing the employers: Roger D. Lapham, George H. Mead, E. J. McMillan, H. B. Horton.

We concur in this directive order insofar as it establishes the principle of a minimum daily guarantee. We do not concur in fixing the minimum rate for common labor at 78 cents per hour.

Representing labor: Thomas Kennedy, George Meany, Robert J. Watt, R. J. Thomas.

[SEAL]

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.,

and

UNITED STEELWORKERS OF AMERICA, CIO, formerly known as STEEL WORKERS ORGANIZING COMMITTEE, CIO

July 16, 1942

In this important case the writing of opinions for the Board on the several issues has been assigned as follows:

To Dr. Taylor, Vice Chairman, the wage issue, to Dr. Graham, the issue of union status, and to Dean Morse (1) the issue of minimum wage guarantee and (2) the question of the jurisdiction of the Board. This opinion by the Chairman is written to summarize the case as a whole.

THE WAGE ISSUE

Because of its relation to that part of the war program which seeks to prevent the cost of living from spiraling upward, the requested wage increase of one dollar ($1.00) a day, or twelve and one-half cents (12½ cents) per hour, is the most important issue in these cases.

We have allowed a wage increase of five and one-half cents (5.5 cents) per hour. Of this amount three and two-tenths cents (3.2 cents) measures a disadvantage in real wages that has been suffered by these steelworkers since January 1941 in the race between wages and prices. It stabilizes the purchasing power of their hourly wage rates as of January 1941. The Board acts on the assumption that prices and living costs will now be stabilized under the President's seven-point program. To the three and two-tenths cents (3.2 cents) stabilization adjustment we have added two and three-tenths cents (2.3 cents) because of equities arising out of the particular circumstances of the wage negotiations in this case. In so doing we have sought to avoid that kind of injustice that comes from rigidly applying a horizontal rule to all cases, without regard to their particular merits; and we have been satisfied to forego mathematical exactness where we could fairly reach a just and reasonable approximation.

What the yardsticks of wage stabilization are, their result in dollars and cents when applied to the wages of these steelworkers and, in addition thereto, the peculiar equities of the steelworkers and the wage allowance based on those equities, are fully set forth in Dr. Taylor's opinion in which I unreservedly concur.

In determining this controversy about wages, the National War Labor Board is governed by two clear directives. In the Price Control Act of January 30, 1942, the Congress directs the National War Labor Board and other agencies of Government dealing with wages "within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages and cost of production." In his message to Congress of April 27, 1942, the President has directed the Board to guide itself, in the stabilization or adjustment of wages, by the anti-inflation policies set forth in that message.

The War Labor Board is particularly charged with responsibility for the third item of the seven-point program "seeking to stabilize the remuneration received by individuals for their work." As to that item the President said: "I believe that stabilizing the cost of living will mean that wages in general can and should be kept at existing scales," and at the same time he directed the Board to "continue to give due consideration to inequalities and the elimination of substandards of living," and added: "I repeat that all of these processes, now in existence, will work equitably for the overwhelming proportion of all our workers if we can keep the cost of living down and stabilize their remuneration."

Since the announcement of the seven-point program, the Board has decided a number of cases in which it has allowed wage increases to adjust inequalities within the particular wage structure under consideration. In some of those cases it has refused wage increases that would have led to a higher level of wages throughout an industry or area. And it has in certain cases given particular attention to the lower wage brackets which might fairly be regarded as inadequate to produce decent standards of living.

The present case is the first one in which the Board has been confronted by a demand for a general wage increase affecting a widely extended and substantially equalized wage structure throughout an industry, and in which the lowest wages are above that level which the Board has thought of as too low to afford a decent living standard.

The problem that now confronts the Board is, therefore, to decide what is a fair and equitable application to this wage dispute of the national policy which requires that wages in general should be kept at existing scales in order to stabilize the remuneration received by individuals for their work and keep the cost of living from spiraling upward.

We agree with the contention of the union that the policy declared by the President involved a deliberate choice to reject any arbitrary freezing of wages and to leave wage adjustments, where agreement could not be reached by collective bargaining, to final determination

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by the War Labor Board. The union has declared its acceptance of the President's 7-point stabilization program in full, and has said that it does not contend that all items in the program must be accomplished before wages can be stabilized. In return the steelworkers have the President's assurance, given to the whole country in his address to the Nation of April 28, that "I shall use all of the executive power that I have to carry out the policy laid down."

In determining for this case a fair and equitable wage for the steel industry within the national program of economic stabilization there are certain basic principles with which we think no one will disagree.

(1) We must fight the war without seeking special privileges or new profits for any particular group. The steelworkers accept this principle, and declare that they are not seeking to establish any special privilege or exact any tribute out of the war program.

(2) Because of the need for maximum war production it is necessary that fair and equitable labor standards should not be broken down. All the history of industrial production shows that because of their contribution to efficient production, if for no other reason, achieved standards should be maintained. That was the declared policy of the nation during the last war and it was reiterated by the Advisory Commission to the Council of National Defense at the beginning of the Lend-Lease program preceding this war. Not to protect those standards would justly give rise to a sense of insecurity and frustration among the workers who remain at home; and it is only fair to the workers who are drawn into the fighting services that their standards should be protected while they are away.

Indeed, it may be said that the main reason why we seek to prevent the cost of living from spiraling upward is that an inflationary price rise destroys everyone's standards, not equally but unequally and irrationally and with peculiar hardship upon the lower income groups. A wage increase granted to standard wage earners would not truly maintain their standards if it were to be followed by further increases in the cost of living; and such a renewal of the race between wages and prices would impose cruel hardships on substandard wage earners. To protect the workers' own standards it is, therefore, essential that in this case the wage adjustment should not be one that will lead to another cycle in the upward movement of prices.

The President expressed this concern for labor's standards and indicated how rising living costs sap them away when, in his telegram on May 2 to the Shipbuilding Wage Stabilization Conference at Chicago, he said:

> There is no surer way to undermine the standards achieved by labor than to fail in our common effort to control the cost of living. Wage earners must do their part, by agreement, to stabilize wages or else the very standards for which we have striven so long will be eaten away by increased costs of living.

It is, of course, true that to win the war all of our citizens who have a decent standard of living must and will be called upon to restrain

their purchases and surrender many things they have become accustomed to. But, surely, when the country as a whole is called upon to sacrifice income for payment of war costs, that call should come not in wage determinations by the War Labor Board addressed to workers alone but in taxation by Congress, where all our citizens are represented, and where taxes can be so measured that the imposed reduction of income will fall equitably upon all groups according to their financial ability to contribute to the national purpose and to the preservation of the things for which we fight.

With these principles in mind we have tried, in adjusting the wages in this case, to define a solid basis of stabilization, and at the same time to fairly evaluate and correct inequities that have already resulted from the past cycle in the upward movement of prices; and we have further taken into consideration certain inequities which arise out of the past history of this particular group of workers and the particular circumstances of the case.

In this way the Board has tried to implement fair and equitable wage stabilization.

We are convinced that the yardsticks of wage stabilization thus applied are fair and equitable and at the same time sufficient to prevent the cost of living from spiraling upward because of wage adjustments. We think they lead to a "terminal" for the tragic race between wages and prices.

On this basis labor will have made its move of self-restraint in the seven-point program. If all other groups likewise do their part we may expect to get and hold for the duration of the war stability of standards, and the freedom from apprehension that goes with such stability.

When the war is over we may expect, with our feet on the ground in a free world, to go forward together, with a renewed determination to improve the standard of living of the wage earners and, indeed, of all groups of our people.

UNION STATUS

We have recommended a maintenance of membership clause primarily on the ground that to make effective in this case the wage adjustment required by the stabilization policy, and to achieve maximum war production, we will need to the fullest not only the physiological and social satisfactions that come to workers from union membership, but also the leadership that has already been displayed by the loyal and responsible officers of this union.

The maintenance of membership clause which we recommend clearly and unmistakably provides for each individual, after ample time to think it over, an unrestricted opportunity to choose for himself whether he will or will not assume the obligation to continue his membership in the union for the duration of the contract and to accept the monthly check-off of his union dues. The obligation imposed upon the companies is an obligation to cooperate with the union in requiring mem-

bers to abide by the obligation as to union membership and check-off which they individually and voluntarily assume.

The check-off provision here added to the membership maintenance obligation has been very carefully weighed in the light of all the circumstances of this particular case. If such a provision is included the employer is entitled to every assurance of contractual and financial responsibility on the part of the union. This union, as the panel has found, has that kind of responsibility. Its constitution and bylaws provide for annual election of officers by secret ballot; its initiation fee and dues are moderate and not easily changed; it has never levied assessments on its members; all dues are remitted directly to the central office where the accounts are audited quarterly and reported to the locals.

In denying the union's request for a union shop we have agreed with the argument of the companies that we should not impose upon them any obligation to force their employees to become or remain members of the union. We have rejected all forms of compulsory unionism in these plants. The obligation to remain a member of the union and to pay dues for the duration of the proposed contract is, under the provision of the Board's order, an obligation that rests on the individual choice of each member.

As to coercion, the provision in the Board's order establishes a rule and appoints an impartial judge. It is impossible to do more with respect to any rule, whether it be a rule of law or a rule established by agreement.

MINIMUM WAGE GUARANTEE

By unanimous vote the Board has provided for putting into effect in a reasonable way a procedure strongly recommended to the steel industry by William Howard Taft nearly a quarter of a century ago. The Board's decision rests on the fact that it is always destructive of morale, and detrimental to production, to leave the wage earner in such a position that he cannot readily know, as soon as he counts the money in his pay envelope, the basis upon which his pay has been calculated.

JURISDICTION

As to the jurisdiction of the Board there can be no doubt that these disputes are "labor disputes which might interrupt work which contributes to the effective prosecution of the war," and are, therefore, within the provision of section 3 of the Executive Order of January 12, 1942. As to the suggestion that we have no jurisdiction because of the provision of section 7 of the Executive Order, which provides that it "shall not be construed as superseding or in conflict with the provisions of the * * * National Labor Relations Act," it is quite clear that these disputes are not within the jurisdiction of the National Labor Relations Board, so that there is no superseding conflict of jurisdiction, and we reject the suggestion that the maintenance of membership clause is prohibited by the National Labor Relations Act. We reject it for the reasons fully set forth in the opinion written by Dean

Morse and in accord with the letter of last summer addressed to the President by the Chief Counsel of the National Labor Relations Board. For reasons which are also set forth by Dean Morse we cannot accept the argument that our directive order conflicts with any other Federal statute or with the State laws of Indiana.

The other arguments presented by the companies in support of their challenge of the Board's jurisdiction are not really addressed to the question of jurisdiction but to the question of the power of enforcement. This power lies not in the hands of the Board but in the hands of the President, and we think there is no doubt that the war powers of the President are amply sufficient to support the directive order of the Board in these cases.

(S) WILLIAM H. DAVIS, *Chairman.*

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

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and

UNITED STEELWORKERS OF AMERICA, C. I. O., formerly known as STEEL WORKERS ORGANIZING COMMITTEE, C. I. O.

July 16, 1942

OPINION ON THE WAGE ISSUE

On the wage issue, Dr. George W. Taylor was designated to write the following opinion for the Board:

OPINION

The Board recognizes its duty in the present case to indicate the manner in which the National Economic Policy affects the demands of labor for general wage increases. The program calls for the avoidance of another cycle of general wage increases as one item in a series of seven items conceived for the prevention of an upward spiral in the cost of living. The present decision meets this necessity by pointing the way in which wage inequalities may be eradicated without providing for general wage increases which would feed an inflationary movement. This approach is in the interests of every citizen since the well-being of each one of us is dependent upon a stabilization of the cost of living.

THE NATURE OF THE INFLATION PROBLEM

Let there be no mistaking the fact that stabilizing the cost of living is a many-sided problem. It requires positive and forthright action on many fronts even to keep impending increases in the cost of living within controllable limits. No action taken as respects wages alone can meet the problem. The heart of the matter is in the allotment of from 50 to 60 percent of our national productive resources to the production of instruments of war. The effect of this program on living standards has not yet been fully perceived

because, so far in this war, we have been able to live very well from the huge stocks of consumer's goods which were on the shelves when war struck our Nation.

Without a single further increase in wages, this Nation would face the dangers of a drastically increased cost of living. Our present total purchasing power, compared with the shrinking supply of consumer's goods which will be available to us, is a powerful pressure to increase costs of living. This vexing and urgent problem of controlling the cost of living had to be met in order to bring the full strength of our domestic economy to bear in the attainment of a total victory in a total war.

LABOR'S SHARE IN THE STABILIZATION PROGRAM

The President called upon us, on April 27, 1942, to meet this problem by assuming responsibilities along seven distinct lines. He called upon us, as civilian soldiers in a total war, to stabilize our domestic economy by assuming the sacrifices and by taking the action which would serve our country best. As one of its sacrifices, labor was asked to keep wages at existing scales, democratic means for adjusting inequalities and protecting decent standards having been provided. This obligation bears a direct relation to the broad problem of inflation. The meeting of it will assist greatly in keeping the already huge purchasing power pool from becoming unmanageable and it will avoid the pressure of higher costs on price ceilings.

Labor's sacrifice, necessary for the stabilization of our domestic economy, has been clearly set forth. For the duration of the war, organized labor is expected to forego its quest for an increasing share of the national income. These considerations are also to guide the National War Labor Board in deciding cases which come before it.

URGENCY OF PROBLEM

The time has arrived when "sacrifice" stops connoting hard conditions in the distant future and begins to mean the assumption of tough obligations now in a war-ridden country. The job of effectuating the domestic stabilization program is one of the wartime tasks assigned to all who are not in the armed service. The unavoidable truth is that it will take the total effort of every person in America to win this total war. To ignore this grim reality is to play with national security. Because the magnitude and the urgency of the problem has not been fully perceived, we are prone to toy with the idea of getting to stabilization some day in the nebulous future.

Are we to delay at tackling the job until the stocks of consumer's goods are exhausted and when 50 to 60 percent of our productive capacity is continuously devoted to war needs? It may then be too late. If wages then undertake a hopeless pursuit of prices which have gotten out of control, the task of stabilizing our domestic economy may well be impossible of achievement.

This is no mere theoretical problem. It is a matter of military necessity which is concerned with the domestic front. In this war, we and our allies have already suffered harsh and humiliating military defeats because efforts have been "too little and too late." Complacency has been condoned simply because imminent dangers were not immediately perceptible. Our enemies have capitalized upon this weakness. A continuance of such a pattern could lose this war.

WAGE ADJUSTMENTS BY THE NATIONAL WAR LABOR BOARD

Under the President's National Economic Policy, the Board has the responsibility for deciding cases which come before it in such a manner as will avoid another round of general wage increases in American industry. The President said on April 27, 1942, that "stabilizing the cost of living will mean that wages in general can and should be kept at existing scales."

It is also recognized by the President that in considering wage equities, the National War Labor Board should give "due consideration to inequalities and the elimination of substandards of living." Such wage adjustments as may be necessary to account for these factors do add to the purchasing power pool. They do not, however, have a vital bearing upon the vast problem of inflation since such additions to purchasing power make but an insignificant change in the total problem. Such adjustments can and should be made by the National War Labor Board, in cases before it, when equitable considerations are served. Equally clear, however, is the responsibility of the Board to avoid the starting of another round of general wage increases all over the country. Under the plan for national stabilization such general wage increases could seriously affect the broad problem of controlling inflation.

BASIS FOR CONSIDERING PRESENT WAGE CLAIMS

The wage claims of the union in the "Little Steel" case must be considered in relation to the President's program. Because of the nature of these claims, the National War Labor Board faces squarely the responsibility for indicating the basis upon which a claim for a general wage increase is to be appraised in terms of this program. It must be recognized with the same definiteness that any equities of the steel workers, which are not related to the broad problem of inflation, must be appraised along the lines contemplated by the President's program for the elimination of inequalities.

In full recognition of its grave responsibility to the Nation, and for reasons later detailed in this opinion, the National War Labor Board has determined that the following guiding principles should be applied in evaluating claims for wage increases:

(1) For the period from January 1, 1941, to May 1942, which followed a long period of relative stability, the cost of living increased by about 15 percent. If any group of workers averaged less than a 15-percent increase in hourly wage rates during, or immediately preceding or following, this period, their established peacetime standards have been broken. If any group of workers averaged a 15-percent wage increase or more, their established peacetime standards have been preserved.

(2) Any claims for wage adjustments for the groups whose peacetime standards have been preserved can only be considered in terms of the inequalities or of the substandard conditions specifically referred to in the President's message of April 27, 1942.

(3) Those groups whose peacetime standards have been broken are entitled to have these standards reestablished as a stabilization factor.

(4) The Board, as directed by the President in his April 27 message, will continue to "give due consideration to inequalities and the elimination of substandards of living."

(5) Approximately 20 wage disputes, still pending before the Board, were certified prior to the stabilization date of April 27. The question arises in these cases whether wage rates being paid on April 27, 1942, can or cannot be considered as "existing rates" within the meaning of the President's message or whether they then had the tentative character of disputed rates. Due regard must be given to any factors of equity which would be arbitrarily swept away by "a change of rules in the middle of the game."

The guiding principles outlined above insure, in general, that claims for wage-rate adjustment can be considered on an equitable basis and in a manner which will further the national purpose to stabilize the cost of living. Their use in the present case, however, is not to be construed as establishing an inflexible pattern to be rigidly followed if that would unnecessarily lead to injustice.

Before applying the guiding principles to the complex problems of the present case, it is necessary to comment upon the claims which have been advanced by the union in support of its request for a general increase of $1 per day.

ANALYSIS OF THE UNION'S CLAIM FOR A GENERAL WAGE INCREASE [1]

When this case was certified, the Board appointed a special fact-finding panel "to define and investigate the issues in dispute between the parties in the above-entitled cases and, with respect to such issues, to make and submit to the Board its findings of fact." This panel held extensive hearings and reported its findings to the Board on June 29. Contrary to the common impression, this panel was not asked to and did not make any recommendations. The Board has carefully considered and weighed all of the facts presented to it by the panel and by the parties at a public hearing held on July 1 and 2.

The claim of the union for a $1 per day increase cannot be approved as necessary to eliminate substandards of living. It is claimed

[1] For a detailed statement of the conflicting claims of the parties in these cases, see the Report of the Fact Finding Panel submitted to the National War Labor Board on June 29, 1942.

by the union, however, that present average weekly earnings of steel workers have become out of line as compared with average weekly earnings in durable-goods industries. This has occurred largely because the other durable-goods industries have provided overtime opportunities to their employees, whereas the steel industry has kept average weekly hours at 40 or below. The union suggests that the $1 a day increase is necessary to compensate for the changed relationships in weekly earnings.

To give weight to this argument, one would be compelled, in effect, to provide steel workers with full overtime pay for hours which were not worked by them but which were worked by others. Such a conclusion would be untenable by any reasonable standards. The fact-finding panel in this case did not suggest any such adjustment. The majority of the panel has stated only that "weekly earnings should be given more than their usual weight in the present determination of a just wage for the steel workers." This finding gives no basis for an exact computation. It must be appraised, moreover, in light of the fact that so far the National War Labor Board has acted in wage cases almost exclusively on the basis of comparative hourly rates whenever wage comparisons were pertinent. In the one instance where comparative weekly or annual earnings were given an important weight, the case involved seasonal operations which precluded, throughout the year, even relatively full-time work apart from any overtime considerations. There is no sound basis for recognizing the weekly earnings comparison advanced by the Union in this case as justifying a general increase of $1 per day.

The changed relationship disclosed rests upon differences in hours of work which cannot be corrected by wage-rate adjustments. It can only be corrected by increasing the average hours of work in the steel industry. This will soon become an urgent necessity in the national interest.

The claim of the Union which requires particularly careful examination, in terms of the National Economic Policy, is that the $1 a day general wage increase is justified because of the increase in the cost of living since the time of the last general wage increase in April 1941.

For several years prior to January 1, 1941, wages and costs of living were, in general, relatively stable. Wage rates and prices did change but within narrow limits. Earnings had, therefore, a rather constant purchasing power. Workers knew pretty well what their money would buy. Early in 1941, both wage rates and cost of living started to move upward. By May 1942, the month following the President's stabilization message, the cost of living index had risen approximately 15 percent. During 1941 and the first 4 months of 1942, general wage increases were secured by workers in most American industries. The mentioned upsurge of prices and wages was, in itself, not particularly serious to the national economy because it occurred during a time when ample supplies of consumer goods were available. This upsurge gives stern warning, however, that a

continuance of such a course will lead to economic disaster in time of total war.

The effort to cover past or anticipated price increases, as well as to improve workers' standards of living, by upward wage adjustments in 1941 and early in 1942 resulted in widespread inequities to the standards of American wage earners which had been established before this Nation started to arm for war. The increases in the cost of living subjected the low paid workers to the worst suffering, particularly since so many of them were not organized in such a way as promptly to secure adequate wage adjustments. Instabilities also developed among workers whose wages were above subsistence levels. The workers of some plants and some industries fared relatively well. Others failed to secure a sufficient increase even to maintain their previously established standards. The problems of the steel workers involved in this case affords a pointed illustration. In the period under discussion, cost of living increased by 15 percent, whereas the hourly rate of steel workers increased by only 11.8 percent. In contrast, workers engaged in the manufacture of engines and turbines enjoyed more than a 25 percent increase, according to the Bureau of Labor Statistics.

It became apparent that during a total war, with its decreasing supply of consumer goods, such inequity-producing changes in prices and wages would have to be halted. It has been recognized by this union that conditions will not support a drive for the legitimate peacetime objective of increasing standards of living for all wage earners.

By May 1942 a cycle of adjusting our domestic life to a wartime economy had, in a sense, been completed. Cost of living had increased by 15 percent. In a general way, a round of wage increases had been secured by workers which actually acted as an offset to the increased cost of living. The big question before the Nation was whether or not there would be another round, or an unlimited succession of rounds, of wage increases in a vain effort to keep up with a steadily increasing cost of living.

The National Economic Policy was devised in a large measure to call off the inequity-producing race between prices and wages. A price-stabilization act was passed by Congress to halt general upward rises in prices. It was determined by the President in his April 27 message that such action would make it possible to call off the pursuit by wages.

As noted earlier in this opinion, numerous inequities in the wages paid to particular groups of workers had developed during the mentioned cycle of wage increases. An outright freezing of all wages would perpetuate those inequities. It was only after this matter had been thoroughly threshed out in public that it was decided not to freeze all wages but to proceed on a basis which would permit the adjustment of such inequities.

In a very real sense, the National War Labor Board has the responsibility, in cases which come before it, to eradicate the inequities in wages which developed during the race between wages and cost of

living from January 1, 1941, to April 27, 1942. Such adjustments are to wind up that cycle. As noted earlier in this opinion, such wage adjustments can have no really significant effect upon the broad inflation problem.

What are the types of inequities which are to be rectified under the stabilization program? In various wage decisions already issued by the Board, adjustments of wage-rate inequities within a plant or between plants in the same industry have been made. In the present case attention is focused upon a different type of inequity incident to a loss of wage standards which had been established prior to our National Defense Program. The race between cost of living and wages which was terminated on April 27, 1942, clearly resulted in the loss of established standards for those groups of workers whose average wage-rate adjustments from January 1, 1941, to May 1, 1942, totaled less than the 15 percent cost of living increase which occurred in this period.

It is believed that established peacetime labor standards should be reasonably maintained as a part of the process of ending the race between wages and prices. Such labor standards can be preserved without having any significant effect upon the broad inflation problem. This is of major importance to the present case since the wage-increase secured by the steel workers from January 1, 1941, to May 1, 1942, was 11.8 percent as compared with the 15 percent increase in the cost of living during this period. Adjustment for such inequities is a particular duty of the National War Labor Board under the National Economic Policy.

What the National War Labor Board must not do, and what it avoids doing in this case, is to start another lap on the race between prices and wages. Another cycle of general wage increases started at this time would seriously threaten the chance to stabilize the cost of living. This is not a mere judgment of the National War Labor Board. A much stronger basis for this position is the explicit expression of policy in the President's message to Congress of April 27, 1942. The entire National Economic Policy is unmistakably based upon the general maintenance of wage rates at existing scales as a necessity for the stabilization of our domestic economy in the interest of winning the war.

It has been contended that the standard which should be preserved is the real wage which was provided by the 10 cent an hour increase received by the steel workers in April 1941. This, however, was not a peacetime standard, since the country was then in the midst of girding itself for war and the race between wages and the cost of living had already begun.

Under the President's program, the National War Labor Board has no right to increase the existing rates of steelworkers to compensate for the increase in the cost of living which has occurred in the wage-price race since the time of their last wage increase. There is no doubt, therefore, that the union demand for a general wage increase of $1 a day cannot be approved by the National War Labor Board on the basis that cost of living has increased over 13 percent since the

date of the last wage increase received by the steelworkers involved in this case. Such a wage increase would be entirely incompatible with the President's stabilization policy.

DETERMINATION OF THE WAGE ISSUE IN THESE CASES

Stabilization factor.—During the period from January 1, 1941, to May 1, 1942, the steelworkers involved in this case received an hourly wage-rate increase of 11.8 percent. During the same period, cost of living increased by 15 percent, in the Nation as a whole. The established standards of the steelworkers, already attained in peacetime, were impaired by reference to a reasonable standard. In the inequity-producing race between wages and prices the earnings of these steelworkers failed to keep pace. The resulting maladjustment should be rectified by the National War Labor Board in fulfillment of its task of eliminating the inequalities which developed prior to the inauguration of the stabilization program.

It is determined, therefore, that a wage increase of $0.032 per hour is payable to the steelworkers as a stabilization factor.

Time equities of steelworkers.—Another of the previously mentioned guiding principles must be used in determining the wage issue in this case, because the "Little Steel" cases were certified to the National War Labor Board prior to the stabilization date of April 27, 1942. Such cases must be carefully appraised by the Board in order to determine whether or not real employee equities would be arbitrarily washed away by a retroactive application of the stabilization program.

Prior to the stabilization date of April 27, 1942, claims for general wage increases were appraised by reference to standards which gave a relatively great weight to cost-of-living changes which had occurred since the last wage adjustment in any case. This was true of cases decided by the National War Labor Board, in wage rates arrived at by collective bargaining throughout the country, and in most wage adjustments made by employers on their own initiative. The "Little Steel" cases were certified to this Board on February 9 and 10, 1942, at a time when there had not been too broad a challenge to the possibility of maintaining, through adjustment of hourly earnings, the real wage established by the last previous wage change.

No collective bargaining agreements were in existence between these steel companies and the union when, on or about January 19, 1942, the union placed its demand for a $1 a day general wage increase. The union had every right to make such a demand at that time since it did not have any contract with these four companies which might have required that the earlier wage increase of April 1941 be effective for a fixed period of time.

The formulation by the union, on January 19, 1942, of a wage demand might well be considered as the equivalent of a request that real average hourly earnings be restored to the April 1941 level. There were intimations, however, even in January 1942, that the practicability of maintaining constant real wages would most likely

have to be reconsidered in the light of a war economy. The matter came to a head before the National War Labor Board in its deliberations on the *International Harvester Case* in which it was recognized that all real wages could not be strictly maintained. Even before the President announced his program, the Board had recognized the need for adjusting wages on some other basis than preservation of the real value of the high hourly earnings of the summer of 1941. On April 27, 1942, the President included stabilization of wages as one point of the seven-point front on which the battle against inflation had to be fought. As respects the wage cases actually pending before the Board on April 27, 1942, the rules of the game were changed. These wage cases were being considered on one basis when a new set of rules was promulgated.

The fact of the matter is that the union and the workers in the steel industry would unquestionably feel that had this case been handled quickly they would have received a wage adjustment representing a greater proportion of the increase in cost of living than can be provided under the stabilization program. There is merit to such reasoning. A mechanical and a rigid application of the stabilization program to this long-pending case would properly lead to a deep sense of injustice on the part of the steelworkers who would feel that their interests had been overridden by a change of the rules in the middle of the game. The Board feels that arbitrariness under such circumstances would also offend the American people's sense of fair play.

The Board, with full appreciation of its deep responsibility under the stabilization program, cannot ignore the fundamental equities of the steel workers which arise from these time considerations. This is particularly so since they can be recognized without any disruption of the program to control the cost of living. Nor should these employee equities be ignored because they may be somewhat difficult of appraisal in terms of cents per hour. It is fortunate, however, that the appraisal in question can be made on a bedrock basis by reference to an earlier determination of the Board in the *International Harvester case* which was issued on April 15, 1942. The opinion of the Board in the *Harvester case* indicates quite clearly the attitude of the National War Labor Board toward wage rate adjustments in relation to cost of living changes, prior to the stabilization program. The opinion in that case set forth the "rules of the game" as they appeared to the Board at that time. The opinion stated, in fact, that "the real wage levels which have been previously arrived at through the channels of collective bargaining and which do not impede maximum production of war materials shall be reasonably protected. This does not mean that labor can expect to receive throughout the war upward changes in its wage structure which will enable it to keep pace with upward changes in the cost of living." Acting on such a basis, a general wage increase of $0.045 per hour was provided to Harvester workers in order to compensate them to a partial extent for the increased cost of living which had occurred since their last general wage increase.

The judgment of the National War Labor Board in the "Little Steel" cases is that the equities of the steel workers as above recounted now entitle them to an increase over and above the previously computed stabilization factor. Taking into account the equities incident to the change of the rules in the middle of the game, and recognizing the greater cost of living changes in steel towns as compared with the national average,[2] it is the judgment of the National War Labor Board that the steel workers are entitled to a rate increase of $0.023 per hour in addition to the stabilization factor as previously computed. There is no mathematical exactness in the fraction of a cent which is specified. The exact fraction was selected in order to insure a total rate practical for pay-roll purposes.

The conclusion in this case, therefore, is that the steel workers involved in this case are entitled to a wage increase of $0.032 per hour as a stabilization factor under the National Economic Policy and to an additional wage increase of $0.023 for the mentioned equities possessed by them. This provides them with a total increase of $0.055 per hour or of $0.44 per day.

CONCLUSION

This directive order calls directly upon the steel workers, and indirectly upon all labor, to accept the sacrifices which are their share under the national program for adjusting our domestic economy to the needs of total war. By accepting its responsibilities, labor will have the opportunity for leadership in the fight against economic instability. For with labor meeting its obligations, it has a right to insist that vigorous steps be taken to effectuate every point of the seven-point program. This is a time when labor statesmanship can serve the country well.

The time is now. On the domestic front, the dangers of instability have fortunately been perceived before they are overwhelmingly upon us. We can act now to avoid future dangers. The President has set forth, in his seven-point program, a plan of action to prevent domestic economic instability. It can be carried out now if every citizen stands up to his responsibility. Those seven points chart the road to economic stability in wartime. We will fail to achieve that goal, however, unless all civilian interests accept fully the restraints and the sacrifices which constitute their share of the program. A meeting of the clearly defined needs of this hour will avoid any possibility of the charge of failure on the domestic front because of action "too little and too late."

Opinion by:

(S) GEORGE W. TAYLOR.

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[2] This factor is mentioned because of its emphasis in discussions of this case before the fact finding panel. In the absence of such evidence, the Board would simply follow its usual procedure of using changes in cost of living as described by the general index.

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.

and

UNITED STEELWORKERS OF AMERICA, CIO, formerly known as STEEL WORKERS ORGANIZING COMMITTEE, CIO

July 16, 1942

OPINION ON UNION SECURITY ISSUE

On the union security issue, Dr. Frank P. Graham was designated to write the following opinion for the Board.

OPINION

The decision of the National War Labor Board in this case against a Government-enforced compulsory unionism and in favor of a voluntarily accepted binding maintenance of membership and check-off, protects both the individual freedom of the workers and the essential security of the union. This decision, following the certifications of the union in the plants of four of the Little Steel companies—Bethlehem, Republic, Youngstown, and Inland—by the National Labor Relations Board, for the first time in the history of this basic but once turbulent industry, amply guarantees the freedom and security of the union in these plants. This first ample protection of the union is also primarily a timely provision for a more stable basis for maximum production for winning the war. Stability for this union is a contribution to winning the war not only because, technologically, it involves steel as the metal most essential to mechanized war, but also because, democratically, it involves the right of the steel workers to self-organization in a free and secure union as basic to the structure of American freedom. The steel and human beings, the machines and ideas, the technology and democracy, involved in this case are the very stuff of our American mechanisms and historic convictions with which and for which the war is fought and must be won.

The contention that the status of the union is not a proper subject for the consideration of this Board overlooks the basic nature of the issue as a historic and present cause of labor disputes; would nullify the President's Executive order; abolish the national agreement against strikes and lock-outs and for the peaceful settlement of all disputes; would substitute the jurisdiction of the picket lines for the jurisdiction of the Board, and would cause a break-down of production to replace our present unparalleled and almost unbroken production in a critical year. Moreover, it is unfair to attempt to hold the unions fixed in the midst of a tremendous industrial expansion, unwise to try to hold them static in a dynamic industrial society and undemocratic to call a halt to the free development of organizations of workers in the midst of a war for freedom.

THE PROTECTION OF THE FREEDOM OF THE WORKERS IN THIS MAINTENANCE OF MEMBERSHIP PROVISION

In this case the union demands the complete union shop and the compulsory check-off. The four companies have long stood for the principles of the open shop. They now deal with the union without recent resistance to the provisions of the Wagner Act. The union holds that its position is in the American tradition of democracy with its acceptance of the rule and security of the large union majority who have instructed for the union shop and check-off. The companies hold that their position is in the American tradition of freedom with its guarantees of the liberties of the individual. Several millions of Americans work in union shops and more millions work in open shops. We have in this dispute the conflicting rights of the more than two-thirds majority of the workers who are in this union and of the less than one-third of the workers in each of the four companies who are outside the union.

In this case the Board protects the rights of the majority and the minority, rejects the union's demand for a union shop and compulsory check-off, and rejects the companies' demand for no change in present union status. The Board decides in favor of the voluntarily accepted maintenance of membership and check-off of those members of the union who are in good standing on the fifteenth day after this directive order, or who may thereafter voluntarily join the union. This provision is not a closed shop, is not a union shop, and is not a preferential shop. No old employee and no new employee is required to join the union to keep his job. If in the union, a member has the freedom for 15 days to get out and keep his job. If not in the union, the worker has the freedom to stay out and keep his job. This freedom to join or not to join, to stay in or get out, with foreknowledge of being bound by this clause as a condition of employment during the term of the contract, provides for both individual liberty and union security.

This decision provides against coercion and intimidation of the worker into membership in the union.

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STABILITY OF THE UNION THROUGH MAINTENANCE OF MEMBERSHIP

By and large, the maintenance of a stable union membership makes for the maintenance of responsible union leadership and responsible union discipline, makes for keeping faithfully the terms of the contract, and provides a stable basis for union-management cooperation for more efficient production. If union leadership is responsible and cooperative, then irresponsible and uncooperative members cannot escape discipline by getting out of the union and thus disrupt relations and hamper production. If the union leadership should prove unworthy, demagogic, and irresponsible, then worthy and responsible members of the union still remain inside the union to correct abuses, select better leaders, and improve production. This establishment of a more stable basis for union-management relations can, with wise and cooperative leadership on both sides, contribute to a united concentration on the supreme task of winning the war.

SPECIAL VALUES OF A VOLUNTARY BINDING CHECK-OFF IN THIS CASE

The voluntary binding check-off on the basis of the special facts in this case, and not as a precedent for other cases, protects the free choice of the worker. If not in the union he is, of course, not subject to the check-off. If in the union, he may, within the 15-day period, get out rather than be bound by the check-off, and yet keep his job. The voluntarily accepted binding check-off will contribute to the security and stability of the union, and affords a basis for cooperation between the company and the union. Just as the union has the opportunity to cooperate with the company in maintaining shop discipline and promoting efficient production, so the company has the opportunity to cooperate with the union in its special problem of collecting dues. At present, the company forbids the collection of dues on company property, and provides no facilities anywhere for this purpose. The problem is further accentuated by the difficulties and complications of many different nationalities and races among the workers, the widely separated and farflung locations of mills and homes, and the limitations on transportation. Since some of the companies make deductions for several other authorized items due to the agencies and causes in which the companies believe or have an interest, steel workers often have the impression that the companies are opposed to the union because they do not check off dues to the union.

The check-off eliminates the picket lines for collecting dues and their attendant abuses. With a maintenance-of-membership clause, the check-off prevents the necessity for the discharge of a would-be delinquent. As pointed out in the panel report, the check-off will save the time of the union leaders for the settlement of grievances and the improvement of production. This sharing by the company and the union of their common problems and their responsibilities for shop discipline and efficient production through the maintenance of a stable membership and the prompt collection of union dues,

makes for a better and more cooperative company, and a more responsible and more cooperative union. The time, thought, and energy given in tense struggles for the organization, maintenance of membership, and collection of dues, necessary and educationally valuable as they are, should as fairly and wisely as possible now be concentrated on winning the war. The intense struggle to maintain the labor unions should, by a stabilization of the union, give way to the more intense and larger struggle to maintain the American Union as the hope of freedom and peace in the world.

THE LARGER FREEDOM OF THE WORKERS THROUGH A STABLE UNION

The voluntary check-off and the voluntary maintenance of membership not only protect the liberty of the individual to choose both or neither, but also, by their binding effect, once chosen, they provide for the larger liberty of the members in a secure and stable union. Membership in any organization necessarily imposes restrictions. A free union like our free society, derives its freedom from the consent of the governed and from the subordination of personal rights to the general welfare of all the members of the union. Limitations on individual rights are, by the very nature of organized society, the basis of civilization itself. Some limitations on the individual liberty of workers are self-imposed for the larger liberty of the independence, dignity, self-expression, and creative cooperation of workers in labor unions through which they have won and are winning a larger share in the economic, social, and spiritual things by which men work and live, and for which they hope and dream for themselves and their children.

Those who hold that the freedom of the worker is protected in peacetime by a corporation's own agreement to compel its workers to join a closed-shop union and to accept the compulsory binding check-off cannot hold that it is a violation of freedom in wartime for the War Labor Board to ask corporations, on the basis of this record, to accept the less security for the union as provided in the voluntarily accepted maintenance of membership and the voluntarily accepted check-off.

THE UNITED STEEL WORKERS OF AMERICA

The union asking for security in this case is worthy of the freedom and responsibility of the voluntary and binding maintenance of union membership and check-off. The United Steel Workers of America, on the record, is one of the most democratic, responsible and efficient unions in America. Elections are held periodically and by secret ballot. A strike to be authorized must have a secret two-thirds majority of the local, and must have the sanction of the international office. The membership fee is $1 a month. The initiation fee is $3. No assessment has yet been made against the members of this union. Accounts are audited every 3 months by a certified public accountant and reported to the membership. It is the expressed policy of the union to cooperate with management in the

keeping of agreements, in maintaining discipline, and in improving production.

PAST HISTORY AND FEAR OF THE FUTURE

Not only does the record show that this union is worthy of security and responsibility, but the history of unionism in the Steel Belt in general and the fears remaining from experiences in Little Steel in particular make necessary and wise more definite provisions for the freedom and security of the union. The history of the struggles of iron and steel workers against heavy odds to organize, still vivid in the lore of the steel families, reaches back to include the pioneer organization in 1859 of the iron workers as the Sons of Vulcan, the federation of iron and steel unions in 1876 into the Amalgamated Association of Iron and Steel Workers, and the recent dramatic rise of the Steel Workers Organizing Committee, now become the United Steel Workers of America.

There is found in this long and bitter struggle ground for the fear of the steel workers concerning the security of their union. The iron and steel workers recall that, when their forerunners had one of the strongest unions in America in 1892, they lost in a pivotal struggle for existence at Homestead. The union was crushed in a bloody private war with long disastrous results for unionism in all the steel dominions. When the steel workers later tried to match the giant financial combinations of the corporate power of the United States Steel Corporation with a united combination of the craft unions in steel, the crucial test came in the head-on collision in the great steel strike of 1919. The strike was crushed. The Corporation became master of the hours, wages and working conditions of the workers as individuals. The unions, decisively beaten, retreated on all the steel fronts. Collective bargaining by steel workers had to wait many years for another day. Meantime scars of past industrial wars remained deep. Workers' memories in the steel towns included terrorism and counter terrorism, mass picketing and mass smear hysteria, jailing of union leaders, injunctions, suppression of meetings of workers and their civil liberties, discriminations against union members, espionage, blacklists, discharges, evictions, muster of company guards, Pinkerton levies, imported strike breakers and the state militia. The steel workers remember that, even in their new day, section 7A was answered with the organization of company unions and the National Labor Relations Act was stubbornly resisted in the courts.

The National Labor Relations Act has stood up against all attacks and in the long run provides the solid ground for the freedom and security of the United Steel Workers and all other bona fide labor unions in America. This act made possible the decisive victory in Jones and Laughlin at Aliquippa in 1936, the epochal Taylor-Lewis Agreement in 1937 for the recognition of the S. W. O. C. for members only by the United Steel Corporation, and the historic Murray-Fairless contract between Carnegie-Illinois and the S. W. O. C.

Though Little Steel refused to follow this lead of U. S. Steel, the act made possible the recognition of the union by an election in Bethelehem, and by a cross check of union membership and company pay rolls in Republic, Youngstown and Inland under the direction of the National Labor Relations Board between May and November 1941. All these companies, which are among the most important in America for the war effort are giving genuine signs of a new industrial statesmanship. One of these corporations, in one of its subsidiary divisions, is building, in all of its plants, more ships for the war than any other company in the world. The panel finds "no outstanding decision concerning unfair labor practices at Inland" and "no new antiunion practices have had their inception during the past 2 years" in Bethlehem, Republic and Youngstown. This recently more hopeful record, the N. L. R. B. elections, and the sustained integrity of the Wagner Act are solid groundwork for a voluntarily accepted binding maintenance of membership and check-off as definite assurances of good will and mutual cooperation for all-out production to win the war. The historic memories, potential fears, and consuming energies of old private wars between steel companies and steel unions now gives place to the total war of unions, corporations, and a united America against Hitler and the Axis powers.

THE LABOR UNION AS THE FOURTH CHAPTER IN RISE OF DEMOCRACY

High on Hitler's list of the institutions of democracy early marked for the destruction necessary to clear the way for the rise of the Nazi dictatorship were and are the church, the parliament, the corporation, and the labor union. These four institutions are the focal motive force of the four main chapters in the rise of human freedom. The freedom of human beings to organize in autonomous groups has been won through long struggles in the fields of religion, politics, business, and labor.

The power of the great Roman Empire struck down the unrecognized and despised organizations of early Christians but the little congregations of lowly believers became the Church Universal, which transformed the sackable city of Rome into the unsackable City of God, transmitted the ancient learning, resynthesized Western culture, built the cathedrals, founded the universities, and despite all its faults and failures, with its Hebraic-Christian conception of the brothers of men and the sons of God, has been for the longest period the most beneficent organization in history. The church, in its turn of predominance, tried to block the rise to absolute power of the new autonomous nations within the ecclesiastical dominion. Then the new absolute national monarchies, having become entrenched in independent power, sought to check the rise to increasing power of the autonomous organization of the people's representatives in Parliament. Yet Parliament won its struggle for collective bargaining with the king, and their written agreement became the English Bill of Rights, which, since 1689, has been the charter of constitutional gov-

ernment for all nations which have followed the traditions of the English-speaking peoples.

It was historically logical that the democratic idea of autonomous organization, which achieved victories in the fields of religion and politics, should become an issue in the fields of commerce and industry. The commercial and industrial revolutions created successively the commercial and industrial middle classes, which, through autonomous corporations, soon established their dominant positions in modern society. The corporations helped to overthrow feudal serfdom and gathered the savings of people anywhere in the service of people everywhere. The English Parliament having become a stronghold of the commercial and industrial leaders, and an instrument of corporate power, prohibited workingmen from organizing in behalf of better conditions of life and labor. The struggle of industrial workers to organize and win the reluctant recognition of legislative bodies, the courts, and the corporations, is the latest chapter in the democratic struggle of human beings for autonomous organization around a great human need. The movement of working people against heavy odds to win a simple share in the control of their own lives is one of the great human movements of the last hundred years and is at the center of the struggle for freedom and democracy in our time.

The freedom and independence of the labor union is of the essence of historic Americanism. The little band of religious Pilgrims who, in seeking the right to organize for the worship of God without the consent of king or bishop, after many vicissitudes in a foreign land and across uncharted seas still clinging to their principles of piety and autonomous religious organization, fetched up on the wintry shores of Massachusetts where their spiritual heroism made Plymouth Rock one of the foundation stones of self-government in America. One year before the Pilgrims reached American shores, Sir Edwin Sandys led a movement in the London Company to recognize the self-organization of the settlers in Virginia. The less farsighted businessmen said it would ruin the business enterprise to give these workingmen the right to share in the regulation of their conditions of life and labor. But the intelligent idealism of Sir Edwin Sandys prevailed over the fears of the more practical minded businessmen. Thus was born the first representative assembly in the New World. The democratic idea of autonomous political organization, later federated in the American Union, whose American standard was first raised on the banks of the James River in old Virginia, still flies its flag high in all the Western World. The freedom and security of the right of all human beings to organize in churches, legislatures, corporations, and labor unions is part of the basic meaning of our American freedom and is at the heart of what the war is all about. Hitler is out to destroy the freedom of America and the free basic institutions of democracy everywhere. The struggle over the freedom and security of the union is, therefore, one of the latest episodes in the American chapter of the rise of democracy in the modern world, and is at the very center of the global struggle between the United Nations and the Axis powers.

THE PRESENT CRISIS

Today the power of the Axis tyranny reaches from the Alaskan islands to the outposts of Australia, across the Mediterranean and North Africa to the gates of Alexandria, from the top of Norway to the Bay of Biscay, and from the shores of France to the plains of Russia across the Don and in a mighty sweeping movement toward the Volga. In mankind's darkest hour, still holds the heroism of the Russian, British, and Chinese peoples counting not the cost even unto death of millions of their best and bravest sons, giving their all that the free institutions of the people shall not perish from the earth. One of the youngest of these free institutions would, by this decision, be made more secure for the all-out effort to win the war. By provision for the freedom and security of this union, the empire of steel becomes potentially the commonwealth of steel. The commonwealth of steel becomes even more a basic resource of the American Commonwealth in the production of ships, planes, tanks, and guns for the mighty forward fronts of democracy which will beat back the Axis powers and make possible at last the advance of freedom and the organization of justice and peace in the world.

Opinion by:

(S) FRANK P. GRAHAM.

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

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BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET AND TUBE COMPANY, INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA, CIO, formerly known as STEEL WORKERS ORGANIZING COMMITTEE, CIO

July 16, 1942

OPINION ON THE MINIMUM WAGE GUARANTEE ISSUE

On the minimum wage guarantee issue, Mr. Wayne L. Morse was designated to write the following opinion for the Board.

OPINION

A. *Union demand.*

This issue arises from the union's demand that the collective bargaining contract to be entered into between the union and each of the companies in settlement of this dispute should contain the following provision:

> The corporation agrees that each employee will receive for each day of work either 85 cents per hour or his occupational rate, for the hours worked on that date, or his earnings which would include the tonnage, piecework, or contract rate, whichever alternative is the highest.

In other words, the union's request is, basically, that the worker should be guaranteed a minimum daily wage, rather than a minimum amount for each pay period. The request is confined only to those employees working upon the so-called incentive rate basis, because all other workers do know what their daily wage is. The guarantee may be broken down into three parts. The employee would receive for each day of work either the minimum common labor rate, or his occupational rate, for the hours worked on that day, or his piecework, tonnage, or production earnings, whichever of the three alternatives is the highest.

The reason for the request is that under the present system an employee working upon a piecework rate may earn more than the minimum wage on one day, and because of some mischance, due to no

fault of his own, such as insufficient materials or defective equipment, he may earn less the following day. As a result, at the end of the pay period, his earnings being averaged, the employee would receive a sum equal only to the minimum hourly rate, even though he had on a certain day produced enough to entitle him to additional compensation for that day.

B. *Contentions of the parties.*

The panel in its report to the Board summarizes the arguments advanced by the companies against the union's proposal on this issue as follows:

> 1. That it is not feasible to compute a worker's pay at the end of each day's work because many plant operations, involving both productive and so-called nonproductive work, extend beyond a single day.
> 2. That the cycle of operations more naturally extends over a pay period.
> 3. That incentive and tonnage rates are based upon the number of units produced; that these rates are so computed as to insure the employees sufficient earnings for their productive work, which, added to earnings received for nonproductive work, will amount to the originally estimated fair wage for the type of skill and effort involved, with extra compensation for increased skill and effort.
> 4. That tonnage, incentive, and piecework rates are based upon an accurate estimate of the factors involved in plant operations, including delays which may lessen an employee's earnings.
> 5. That the present rate structure is satisfactory to their employees.
> 6. That any change in the rate structure would diminish employee incentive to make up for failure to earn the minimum on any particular day, and thus reduce production.
> 7. That, if a daily guarantee is granted, incentive and tonnage rates will have to be revised to preclude employees from earning, over a pay period, more than they now earn, and to avoid paying higher wages than are paid to employees of other companies performing similar types of work.

The panel's summary of the union's arguments in support of the minimum wage guarantee proposal is as follows:

> 1. That where an employee works for a day and then for some reason does not work any more during a particular pay period, he is either paid for his earnings for that day or receives the minimum guarantee, whichever is higher (Union, Exh. A, p. 113). The mere fact that an employee works for more than a day during the pay period, the union argues, is no justification for averaging his earnings before the minimum guarantee becomes applicable.
> 2. That a worker's failure to earn the guaranteed minimum is sometimes the result of managerial inefficiency reflected in its maldistribution of work.
> 3. Incentive, tonnage, and piecework rates cannot encompass an evaluation of all the factors that may lessen the employees' opportunities to earn a just wage each day.
> 4. That the companies' claim that the present rate structure takes care of all important contingencies is not well founded since an invariant rate structure is applied regardless of the length of the period of operations.
> 5. That the practicability of computing earnings at the end of each day is demonstrated by the fact that Inland and Youngstown have either accepted the union's request for such method of computation, or their practice is now as requested.
> 6. That the workers are not happy under the present system and that the union is in the best position to know this fact.
> 7. That if each day's work is computed as a unit, then—
> (a) Management will be more efficient in supplying work and the effect of such delays as do occur will not rest solely on the workers; and

(b) The employee will have a full incentive every day instead of fearing that one bad day may prevent him from earning more than the minimum over an entire pay period.

C. *The findings of the panel.*

The panel's report to the Board sets forth the following findings on this issue:

1. The workers desire the change requested. The union represents the employees and its word should be accepted as to their wishes.
2. Granting the request would involve no direct additional cost to the companies.
3. Under the system presently used, the workers bear the labor costs of any decrease or cessation of work regardless of the cause, except to the extent that the results have been approximated in the make-up of the wage rate—the company bearing the loss due to unproductive equipment.
4. The practicability of granting the union's request is indicated by the fact that Youngstown and Inland are complying with or have agreed to comply with the union's request.
5. Since the requested change is not intended to increase wages and since its effect will be complicated, no reason appears as to why the requested change, if granted, should be made retroactive.

If the Board grants the union's request, on the basis of the foregoing findings, the panel suggests that:

(a) An opportunity should be given to Republic and Bethlehem to negotiate with the union regarding any changes thereby made necessary in the incentive, tonnage, or piecework rates, on the assumption that the companies will have to bear no direct additional cost (Rec. p. 593), and that the steel workers' pay for performing a given quantity and type of work shall not be decreased.

(b) The execution of collective-bargaining agreements between the union and the companies, including such provision, if any, as the Board may make regarding daily minimum guarantee, should not be delayed because of such negotiations.

(c) Such negotiations should be conducted in accordance with the provisions of the collective-bargaining agreement with a provision for arbitration in the absence of mutual agreement.

D. Decision of the National War Labor Board.

It is the decision of the National War Labor Board that the preponderance of the evidence in the record of this case clearly supports the basic principle of the union's position on this issue; namely, that each employee of the companies should be guaranteed for each day of work either the basic minimum wage per hour, or his occupational rate for the hours worked on that date, or his earnings, which include the tonnage, piecework, or contract rate, whichever alternative is the highest.

Hence, in accordance with that principle, the Board directs that the following provision shall be included in the collective bargaining contract entered into between the parties in the settlement of this dispute:

The corporation agrees that each employee (except apprentices and learners) shall be guaranteed and shall receive for each day's work an amount which shall be not less than 78 cents (the minimum common labor hourly rate for the particular plant involved) multiplied by the number of hours worked by him on that day, but if such employee's fixed occupational hourly rate is more than 78 cents, the corporation agrees and guarantees that he shall receive for each day's work an amount which shall be not less than his fixed occupational hourly rate multiplied by the hours worked by him in that day. Further, in no case shall a worker receive for a given day less than the amount

earned by him as a result of the application of piecework, tonnage, or production rates.

This minimum daily wage guarantee shall become effective as of the date of the directive order in this case. If any changes in the rate structure are effected as a result of this guarantee, such changes shall become effective as of the date upon which the union and companies agree upon said changes.

The Board directs that the foregoing minimum wage guarantee provision shall be applicable to each of the four companies involved in this dispute. Further, the Board adopts and approves the findings of the panel on this issue, save and except the finding that granting the minimum daily wage guarantee request of the union would involve no direct additional cost to the companies. It is the opinion of the Board that the adoption of the minimum daily wage guarantee principle is bound to increase to some extent the wage costs of the companies, but the increase will not be substantial or unreasonable in light of the principles which the Board requests the parties to follow in negotiating this particular minimum wage adjustment.

It is perfectly clear from the record that the parties were more or less in agreement, or at least understood among themselves, that if the Board should approve the union's request for a minimum daily wage guarantee, the parties would be expected to proceed without delay to negotiate any changes thereby made necessary in the incentive, tonnage, or piecework rates. It was recognized that the negotiations should proceed on the assumption that the companies would have to bear no substantial direct additional costs and that the steel workers' pay for performing a given quantity and type of work would not be decreased. In other words, the record shows that the representatives of the union gave the representatives of the companies and of the members of the panel assurances that they were not advancing their demand for a minimum daily wage guarantee for the purpose of obtaining a hidden wage increase over and above their dollar-a-day wage increase demand.

However, at the same time the Board is satisfied from the record that the parties were aware of the fact that the minimum daily wage guarantee by its very nature is bound to increase to some extent wage costs because of the fact that it eliminates the losses now suffered by the men as the result of the practice of the companies whereby the workers' earnings are averaged over a pay period instead of allowing the employees a minimum daily wage guarantee. Hence, the Board realizes that the minimum daily wage guarantee will increase the weekly pay envelopes of some employees, but it is to be expected that the changed rate structure which Bethlehem and Republic are requested to negotiate shall be so constructed as to provide for the same general ratio of labor costs to production as now exists except for the 5½ cents per hour increase in hourly rates allowed by the Board in this case. It is anticipated that the minimum daily wage guarantee will eventually lower the employers' production costs by resulting in increased production and improved managerial efficiency.

It is also to be understood that the collective-bargaining agreements entered into in the settlement of all of the issues involved in this

case shall not be delayed because of any negotiations necessary in adjusting the incentive, tonnage, or piecework rates in accordance with the minimum daily wage guarantee provision. If the companies and the union fail to complete within 90 days from the date of the directive order in this case whatever negotiations may be necessary in adjusting the incentive, piecework, tonnage, or production rates to the minimum daily wage guarantee provision, the adjustment of such rates on the request of either party shall be referred to the final determination of an arbitrator appointed by the War Labor Board in the event that the collective-bargaining agreement does not provide for arbitration.

The soundness of the union's position on this issue will become clear to any fair-minded person when it is recognized that for a great many years the steel workers, particularly in the Bethlehem and Republic plants, have been required to work under various wage-rate calculation formulas so complicated in nature that the individual worker could not figure out his own daily wage. It is not surprising, therefore, that large segments in the steel industry have been harassed for years with much ill-feeling, friction, and labor unrest over this issue. The typical steel worker does not purport to be a mathematician or well informed as to the wage-rate theories of industrial engineers, and, hence, when he is required to work under a complicated wage-rate structure, which is understandable only to wage-rate experts, it is only natural that the worker will oppose it. That is exactly what has happened in this case.

It is no wonder that he becomes disgruntled and distrustful when his wages are computed under a system which may result in the benefits of a day's hard labor being lost to him because, on the day following, the materials with which he works are not properly supplied, or the machine with which he works is out of adjustment. Thus, a simplification of the system is very much to be desired. Clearly the daily wage guarantee granted by this decision will result in a simplification of the wage system, and make it possible for the worker better to understand the method by which his wages are computed. It must be realized that maximum production can only be attained and maintained in a plant when the relation between employer and employee is harmonious. A harmonious relationship can never exist unless there is some measure of trust between the parties, and this feeling of trust, in turn, is dependent upon the assurance on both sides that the other party acts in good faith. Unless an employee can understand the way in which his wages are computed, he may feel that the company has purposely complicated the rate structure in order to confuse him. Regardless of the truth or the accuracy of his conclusions, it must be admitted that such a feeling on the part of the employee is not conducive to a smooth-running plant.

The practice of the Republic and Bethlehem Steel Companies of imposing such a complex wage-rate system upon their employees has given rise over the years to many charges, accusations and suspicions on the part of the employees that the companies have used the system as a device for cheating the men out of part of the wages actually due

them. The companies, of course, deny that there is any sound basis for such charges or suspicions, but the fact remains that Bethlehem and Republic have not taken the necessary steps to remove the basis for such charges, whereas Inland and Youngstown have demonstrated a willingness to eliminate this cause of industrial friction.

It is the position of the War Labor Board that every American workman has the right to know for a certainty just what his minimum daily wage rate is. Any wage-rate structure which makes it impossible for an American workman to answer the simple question, "How much do you receive a day for your work?" is inherently an undesirable wage-rate system.

It is interesting to note that a dispute over the complicated wage-rate structure of the Bethlehem Steel Corporation was presented to the National War Labor Board which was appointed by President Wilson during the First World War. On July 31, 1918, Hon. William Howard Taft and Hon. Frank P. Walsh, Joint Chairmen of the then existing National War Labor Board, handed down a decision in a dispute involving the Machinists and Electrical Workers and other employees versus Bethlehem Steel Corporation. The decision is highly significant in light of the fact that it, too, passed judgment upon the complicated system of computing wages of employees in the Bethlehem Steel plants. The Board stated in part:

> The case of the *Machinists and Electrical Workers* v. *Bethlehem Steel Co.* is of unquestionable importance from the standpoint of the war. It appears beyond doubt that the dissatisfaction among the employees of the company has had and is having a seriously detrimental effect upon the production of war materials absolutely necessary to the success of the American Expeditionary Forces. This was clearly developed in the testimony of the officials of the Ordnance Department.
>
> The main cause of the dissatisfaction is a bonus system so complicated and difficult to understand that almost one-half of the time of the hearings was consumed in efforts to secure a clear idea of the system. The absence of any method of collective bargaining between the management and the employees is another serious cause of unrest, as is also the lack of a basic guaranteed minimum wage rate.
>
> After having carefully reviewed all the evidence in the case, the Board makes the following findings:
>
> 1. *Piece rates, bonus, and basic hourly rates—Machine shops.*—(*a*) The bonus system now in operation should be entirely revised or eliminated, piecework rates should be revised also; and a designated, guaranteed minimum hourly wage rate should be established in conformity with such of the scales now being applied by the War or Navy Department as most nearly fits the conditions in this particular case.
>
> (*b*) Any necessary revision of piecework rates shall be made by an expert in cooperation with the Ordnance Department, the plant management, and a committee from the shops, such expert to be selected by the National War Labor Board and with the approval of the Secretary of War.
>
> (*c*) The piece rates thus established shall not be reduced during the period of the war.

In spite of the fact that the decision of Mr. Taft and Mr. Walsh was handed down 24 years ago, calling for a thorough revision or elimination of Bethlehem's complicated system of computing wages, we find today the same evil prevailing, not only in Bethlehem, but now also in Republic. Why was not the award of the Taft-Walsh War Labor Board in the Bethlehem case carried into effect? For the simple reason that shortly after the award the war ended by an armistice and the

Bethlehem Steel Corporation took the position that upon the signing of the armistice the award of the Taft-Walsh War Labor Board calling upon the company to enter into collective-bargaining negotiations with its employees to the end of eliminating its unfair wage-rate structure was no longer binding upon the company.

It is the opinion of the present National War Labor Board that the time has come for the elimination of the cause of this long-standing dispute. There appears to be no good reason for Bethlehem Steel Corporation and Republic Steel Corporation to object to granting their employees a minimum daily wage guarantee in accordance with the provisions set forth in the directive order in this case. If the Inland Steel Co. and the Youngstown Sheet & Tube Co. can adjust their operations to such a system of computing wages, the Bethlehem Steel Corporation and the Republic Steel Corporation should be able to do the same thing.

Although this change in wage computation may necessitate some initial problems in readjustment, there is little force to the companies' claim that it is not feasible to compute a worker's pay at the end of each day. Although plant operations may extend beyond a given day, they also extend beyond a given pay period. Furthermore, the panel has found that this method of computation is feasible by virtue of the fact that two companies either use it or have agreed to use it, and the Board concurs in that finding.

By adopting the minimum daily wage guarantee, the companies will eliminate one of the principal sources of friction with their employees and they will remove one of the principal causes of suspicion and distrust held toward them by their employees. It is reasonable to expect that the elimination of this cause of friction between the companies and the employees will stimulate work incentive with a resulting increase in production and lower production costs. Likewise, it should prove an incentive for the companies to take the initiative in doing everything possible to eliminate any managerial causes of delay.

However, the compelling and controlling reason for the Board's decision on this issue is that the demand of the union for a minimum daily wage guarantee is a fair and just demand. A failure to grant it would amount to forcing the steel workers to continue working under a wage rate system which is incompatible with the principles of fair dealing.

Opinion by:

(S) WAYNE L. MORSE.

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET AND TUBE COMPANY, INLAND STEEL COMPANY

and

UNITED STEELWORKERS OF AMERICA, CIO, formerly known as STEELWORKERS ORGANIZING COMMITTEE, CIO

July 16, 1942

OPINION ON ISSUE AS TO NATIONAL WAR LABOR BOARD'S JURISDICTION IN THIS CASE

As to the jurisdiction issue, the Board accepts jurisdiction of this case. Mr. Wayne L. Morse was designated to write an opinion for the Board.

OPINION

The jurisdiction of the National War Labor Board to determine finally this dispute has been challenged in the briefs submitted by the companies. As pointed out by the panel, the companies contend that the War Labor Board may not properly consider the issue of union security nor is it susceptible of determination in a judicial proceeding; that the union shop is in contravention of the Selective Service and Training Act of 1940; that the Board has not power to order a closed shop as applied to Inland because closed-shop contracts are illegal in Indiana; that collection of dues is a union function and the employers are prohibited to participate therein. In their briefs, Inland, Bethlehem, and Youngstown have alleged that a collective-bargaining agreement containing a union maintenance clause would be in violation of the National Labor Relations Act.

At a public hearing on July 2, counsel for the Youngstown Sheet & Tube Co. argued at length on the issue of the Board's jurisdiction and filed a special brief, challenging the authority of the Board. In the course of his argument he stated, "I raise a legal question which as far as I know has not heretofore been raised in any proceedings before the National War Labor Board. It goes not merely to the authority of this Board to impose a union security

clause, but goes to the authority of this Board in a much more fundamental respect and that is to issue any directive order which requires anybody to enter into any kind of contract."

The Board has of course considered very carefully the powers and duties entrusted to it under the Executive order of January 12, 1942. In each case over which it has assumed jurisdiction, the Board has first assured itself that the case fell within the terms of the Executive order.

The National War Labor Board was created through the exercise of the President's war power. Hence the jurisdiction, powers, and duties of the Board stem directly from the war powers of the President. The Board functions as a war agency. It is directly responsible to the President and obligated to exercise the powers and carry out the policies entrusted to it by the President. The arguments advanced by counsel for the companies questioning the jurisdiction of the Board fail to take into account this fact.

The objections to the jurisdiction of the Board overlook the fact that there is inherent in the war powers of the President the authority to take such steps as may be necessary to prevent and settle labor disputes which threaten to disrupt the successful prosecution of the war. The President of the United States as Commander in Chief of the armed forces of this Nation, burdened with the duty of seeing that our armed forces are not only successfully directed but also are adequately supplied with the weapons of war, has by Executive order entrusted to the National War Labor Board the duty of finally determining all labor disputes which "might interrupt work which contributes to the effective prosecution of the war."

The Executive order makes clear that the effect of the dispute upon the war effort and not the subject matter of the dispute is the criterion which determines the Board's jurisdiction. There is no basis for questioning the fact that the several issues involved in the instant case constitute a dispute which threatened the prosecution of the war. The production of steel obviously is vital to our war program.

It is immaterial that the issues involved in the dispute are over wages and union security. It is immaterial that in peacetime the parties might conceivably be justified in raising some legal objection to the enforcement of an arbitration award of which they do not approve. In wartime, there is no basis for questioning the power of the President to order what amounts to compulsory arbitration for the settlement of any labor dispute, such as the instant one, which threatens the war effort. The President having entrusted this duty to the National War Labor Board, it follows that those who challenge a decision of the Board, challenge the war powers of the President.

It is generally recognized that the powers of the President in time of war are very broad and are not subject to exact delineation. It has been said that "The domain of the executive power in time of war constitutes a sort of 'Dark Continent,' the jurisdiction and boundaries of which are undetermined." [1] One authority has gone so far as to say that, "From the very beginning of our history as a nation, statesmen and commentators have held that since it is impossible to foresee what may be the exigencies and circumstances endangering the public safety, therefore, 'no constitutional shackles can wisely be imposed' and none are imposed upon the so-called war powers * * *. They have asserted that the war power implies the right to do anything that may seem necessary to carry on the war successfully even to the extent of performing otherwise unconstitutional acts." [2]

A basic reason for the war powers of the President not being subject to exact delineation is that they must be exercised in the light of facts existing during a time of emergency. War powers are by their very nature extraordinary powers designed to meet a situation wherein ordinary legal process is inadequate to meet the war emergency. They are not subject to examination through the magnifying glass of strict legalistic doctrine or technical legal rules applicable to peacetime situations.

It might be said that they are powers which are governed by the laws of national preservation rather than by the rules of the common law. They are powers which contemplate immediate action in order that the President or his agents may "preserve, protect, and defend the Constitution of the United States," [3] and in order that in so preserving the Constitution, the President may fulfill its guarantee that "The United States shall guarantee to every State in this Union a republican form of government and shall protect each of them against invasion." [4] Clearly, the war powers of the President spring from necessity, or as President Lincoln said, "My oath to preserve the Constitution imposed upon me the duty of preserving by every indispensable means, that government, that nation, of which the Constitution was the organic law. Was it possible to lose the nation and yet preserve the Constitution * * *? I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation."

In addition to the broad war powers of the President, it should be mentioned that the President possesses very great powers which are inherent in the Executive Office itself. This is brought out very clearly in a letter which Mr. Justice Frank Murphy wrote to the President of the Senate on October 4, 1939, when he was still Attorney General. He stated:

> The Executive has powers not enumerated in the statutes—powers derived not from statutory grants but from the Constitution. It is universally recognized that the Constitutional duties of the Executive carry with them the Constitutional powers necessary for their proper performance. These Constitutional powers have never been expressly defined and, in fact, cannot be,

[1] James W. Garner, The Executive Power in the United States in Time of War, *Revue du Droit et de la Science Politique*, January-March 1918, p. 13.
[2] Clarence A. Berdahl, *War Powers of the Executive in the United States* (1920), pp. 15–16.
[3] Constitution of the United States, art. II, sec. 1.
[4] Constitution of the United States, art. IV, sec. 4.

since their extent and limitations are largely dependent upon conditions and circumstances. In a measure this is true with respect to most of the powers of the Executive, both Constitutional and statutory. The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action.

To the same effect, Theodore Roosevelt wrote in his autobiography:

The most important factor in getting the right spirit in my administration, next to the insistence upon courage, honesty, and a genuine democracy of desire to serve the plain people was my insistence upon the theory that the executive power was limited only by specific restrictions and prohibitions appearing in the Constitution or imposed by the Congress under its Constitutional powers. My view was that every executive officer, and above all every executive officer in high position, was a steward of the people bound actively and affirmatively to do all he could for the people, and not to content himself with the negative merit of keeping his talents undamaged in a napkin. I declined to adopt the view that what was imperatively necessary for the Nation could not be done by the President unless he could find some specific authorization to do it. My belief was that it was not only his right but his duty to do anything that the needs of the Nation demanded unless such action was forbidden by the Constitution or by the laws.

An article in a recent issue of the Harvard Law Review [5] discusses the executive authority of the President, independent of statute. It states in part:

Despite extensive legislative grants of requisitioning power to the executive, the vastness of modern economic mobilization almost of necessity creates situations in which action is necessary but which are nevertheless beyond the contemplation of statutes. The strike in a defense industry seems to be such a situation, and President Roosevelt's answer to it in those cases where he has seized plants kindles anew the controversy over the legitimate content of presidential authority. Theodore Roosevelt claimed for the President a power limited only by express constitutional prohibitions or restrictions validly imposed by Congress. A contrary view was urged by President Taft, who said "that the President can exercise no power which cannot be fairly and reasonably traced to some specific grant of power or justly implied and included within such express grant as proper and necessary to its exercise." Supreme Court opinions seem inconclusive on the point. Lincoln, in practice the most extreme advocate of presidential action founded on emergency alone, perhaps retreated in theory from that position, for he admitted that he was relying on public opinion and hoped for congressional ratification in his raising of armies during the early days of the Civil War. But the passage of time and the increasing centralization of Government functions make it seem probable that the view of Theodore Roosevelt not only will be adopted in practice today, but also will accord most nearly with modern judicial construction if the question should arise. Under either view, moreover, war augments the executive authority just as it expands the proper area of Federal legislation. In the present crisis, therefore, avoidance of the Taft-Roosevelt conflict may be possible, for there may be sufficient analogy between modern presidential action and traditional concepts of proper military action to find affirmative constitutional authority for what has been done. To the degree that the analogy fails, there is potential danger to democratic processes in congressional abdication to a strong president by failing either to authorize or forbid that which the President may regard as necessary action.

The President's capacity as Commander in Chief furnishes the most direct support for his exercise of requisitioning powers. In *Mitchell* v. *Harmony* [6] and *United States* v. *Russell* [7] the Supreme Court recognized the validity of

[5] "American Economic Mobilization," 55 Harvard Law Review, 427, 516.
[6] See 13 How. 115, 134 (U. S. 1851) (taking held improper on facts).
[7] 13 Wall. 623 (U. S. 1871) (taking held proper).

the taking of private property by an army officer to supply his troops. The court was careful to limit this power to "danger * * * immediate and impending" and "emergency * * * such as will not admit of delay or a resort to any other source of supply." It has been argued that the procurement of supplies for the armed forces is beyond the authority of the President as Commander in Chief, since the Constitution has given to Congress the power to raise and support armies. But in the absence of an express statutory denial, there seems to be no reason why the power of a military officer in the field to requisition supplies in an emergency should be denied to his superior, the President. The development of warfare from a battle between armies to a battle between economies is relevant in determining both the nature of an emergency which must exist for the power to arise and the nature of the goods classifiable as necessary equipment for the waging of war.

As Commander in Chief in time of war, the President's authority extends not only to matters of strictly military nature or to problems directly related to military activity, but also to whatever phases of civilian life must be controlled in order to prosecute the war successfully. The history of this Nation is replete with instances in which our war Presidents have exercised very broad and sweeping powers. Thus, they have, by Executive orders, governed the conduct of enemy aliens, established censorship, placed restrictions on trade and industry and established agencies to carry out such functions. One writer points out that President Lincoln, without Congressional authority, issued a proclamation increasing the size of the Army and the Navy, called for over 80,000 volunteers, ordered 19 vessels added to the Navy and directed the Secretary of the Treasury to advance $2,000,000 of public money to pay for requisitions necessitated by the military and naval increases. He did all this in the face of the constitutional provisions giving Congress the exclusive power to raise and support armies.[8]

The same author also points out that Lincoln, as Commander in Chief of the Army, issued the Emancipation Proclamation depriving numerous people of what theretofore had been considered personal property. He ordered his military commanders to suspend a writ of habeas corpus. It was argued that since this right of suspension appears in the Article of the Constitution devoted to the Legislative Branch of the Government, therefore, this power of suspension was vested in Congress alone.[9] To those who thus argued, President Lincoln replied that as the provision "was plainly made for a dangerous emergency it cannot be believed the framers of the instrument intended that in every case the danger should run its course until Congress should be called together."

President Wilson armed American merchantmen without Constitutional authority, set up various forms of censorship, gave Herbert Hoover "full authority to undertake any steps necessary for the proper organization of efforts for conservation of food resources." [10] Congress itself has on many occasions recognized that it is necessary for

[8] Buell W. Patch, "The War Powers of the President," *Editorial Research Reports*, vol. 2, September 12, 1940.
[9] Joel Parker, *The War Powers of Congress and the President*, (1863), H. O. Houghton, Cambridge, Mass.
[10] Buell W. Patch, Op. cit., supra.

the President to exercise broad war powers and, hence, has passed many statutes implementing those powers.

At the hearing before the Board on July 2, 1942, counsel for Inland stated:

> I do agree without reservation that this Board exercises the war powers of the President. I do not think, however, that it exercises any more of that power than the President has conferred upon it and the extent of the war power conferred on this Board by the President is determined by the Executive order.

It is the position of the War Labor Board that its decision in this case falls within the terms of the Executive order creating the Board. The whole Executive order of January 12, 1942, must be interpreted in light of the purpose for which the Board was created, namely, to settle all labor disputes "which might interrupt work which contributes to the effective prosecution of the war." Section 2 of the order provides that "this order does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted." This section indicates clearly that the President intended to empower the War Labor Board with jurisdiction over all labor disputes, subject to the proviso that it should function as a tribunal of last resort in those instances in which other procedures exist for the settlement of disputes.

Section 3 of the order sets out the procedural steps to be followed by the Board in taking jurisdiction over labor disputes "which might interrupt work which contributes to the effective prosecution of the war." It provides in addition that "after it takes jurisdiction, the Board shall finally determine the dispute and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board."

Counsel for the companies in this case contend that section 7 of the Executive order takes this case out from under the jurisdiction of the Board because the issues involved conflict with the provisions of the National Labor Relations Act. The position of counsel is untenable because section 7 of the Executive order must be read in connection with the rest of the order, particularly in connection with its relation to section 2. It is the view of the War Labor Board that section 7 merely reiterates the point that the Executive order is not to be construed as superseding or conflicting with the jurisdiction of the several agencies functioning under the acts enumerated in the section.

In other words, section 7 of the Executive order does not place a limitation upon the power of the Board finally to determine on their merits whatever issues may arise in a labor dispute, but rather when read in conjunction with section 2 of the order, it places a procedural limitation upon the War Labor Board in that the procedures of other existing agencies for the settlement of labor disputes shall be exhausted before the War Labor Board takes jurisdiction. That is, the section lays down the rule in effect that the War Labor Board shall not supersede or conflict with the jurisdiction of the agencies empowered to carry out the provisions of the various acts enumerated in the section. However, even granting for sake of argument that section 7 of the order relates to matters of substantive law rather than to procedural rights only, there is nothing in the decision of the War Labor Board in this case which conflicts with the provisions of the National Labor Relations Act or any other law enumerated in section 7.

The National Labor Relations Act provides in part:

> SEC. 8. It shall be an unfair labor practice for an employer * * * (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

The maintenance-of-membership clause is not contrary to the National Labor Relations Act if it falls within the proviso of section 8 (3). This specific question has not been adjudicated by any court, and it is therefore proper that we look to the interpretation of the National Labor Relations Board.

On September 11, 1941, the President of the United States suggested to the Chairman of the then existing National Defense Mediation Board that the Board consider, with the National Labor Relations Board, the question now under discussion. This was done, and the general counsel of the National Labor Relations Board confirmed the opinion of the National Defense Mediation Board and reached the conclusion "(1) that the proviso to section 8 (3) makes it lawful under the National Labor Relations Act * * * for an employer to make an agreement with an unassisted union, which is the exclusive representative of the employees in an appropriate unit, requiring as a condition of employment that such employees be members of the contracting union; (2) that the proviso is not confined to the closed-shop variety of contract; and (3) that an employer does not engage in unfair labor practices within section 8 of the National Labor Relations Act by including in a contract with a proper labor organization, a maintenance-of-membership clause."

The rationale of this result lies in the purpose of the proviso. The proviso allows contracts which "require as a condition of employment membership" in a contracting labor organization which is the exclusive representative of the employees in an appropriate unit. It is obvious that the maintenance-of-membership clause goes no further than to "require as a condition of employment membership" in the union. The only difference between this clause and the closed-shop provision is that the latter requires all employees to be union members as a condition of employment, whereas the clause awarded in the instant case makes membership a condition of employment only with respect to those employees who, after a fifteen-day period following the directive order, are members of the union or who

thereafter become members during the life of the contract. Both "require as a condition of employment membership" in the contracting union.

The general counsel of the National Labor Relations Board has also pointed out that although the House and Senate committees discussed the section under consideration only as it related to the closed-shop contract, yet "the legislative history of the act does not warrant any conclusion that Congress intended to confine the protection of the proviso to closed-shop contracts."

The National Labor Relations Board not only has held that closed shops come within the proviso but has also included union preference contracts within its scope. The union preference and closed-shop contracts differ only in degree, as also does the maintenance-of-membership clause. The essential similarity lies in their identity of purpose, namely, the recognition of the advisability of allowing and protecting the strength of bona fide labor organizations. It would be a tortured construction of the National Labor Relations Act to rule that any agreement which provides for a degree of unionism less than the closed shop would be in conflict with the act, whereas a closed-shop agreement would not be. The contention of counsel in this case amounts to just that.

Furthermore, the position of counsel on this point is not well taken because of the fact that the maintenance-of-membership provision is not being adopted voluntarily by the parties, but, in fact, is being imposed upon them by the order of the War Labor Board in accordance with its duty finally to determine this particular labor dispute which threatens to interrupt a successful prosecution of the war effort. Therefore the provisions of the National Labor Relations Act are in no way applicable to the case.

Counsel for Inland has challenged the Board's jurisdiction to order a check-off in their plant on the ground that the check-off violates section 40–201, Burns, Ind. Stat. An., 1933, vol. 8, which provides:

> The assignment of future wages, to become due to employees from persons, companies, corporations or associations affected by this act, is hereby prohibited nor shall any agreement be valid that relieves said persons, companies, corporations or associations from the obligation to pay weekly, the full amount due, or to become due to any employee in accordance with the provisions of this act: *Provided*, That nothing in this act shall be construed to prevent employers advancing money to their employees.

It is the opinion of the Board that the section has no reference to the type of arrangement involved in the check-off system. The Supreme Court of Indiana in passing upon the constitutionality of this statute, very clearly enunciated the legislative purpose behind it. In the case of *International Textbook Company* v. *Weissinger*, 160 Ind. 349, the court stated:

> A large proportion of the persons affected by these statutes of labor are dependent upon their daily or weekly wages for the maintenance of themselves and their families. Delay of payment or loss of wages results in deprivation of the necessities of life, suffering, inability to meet just obligations to others and, in many cases, may make the wage earner a charge upon the public. The situation of these persons renders them peculiarly liable to imposition and injustice at the hands of employers, unscrupulous tradesmen and others who are willing to take advantage of their condition. *Where future wages may be assigned, the temptation to anticipate their payment and to sacrifice them for an inadequate consideration is often very clear.* [Italics supplied.] Such assignments would in many cases leave the laborer or wage earner without present or future means of support. By removing the strongest incentive to faithfully serve—the expectation of pecuniary award in the near future—their effect would be alike injurious to the laborer and his employer.

A Missouri court, while passing upon a similar statute, discussed the Indiana case with approval and stated:

> It is a fact too well known * * * that in our centers of population and trade, wage earners, i. e., those who are paid by the day or the week or the month, constitute the only class which borrows money and pledges its future earnings in payment of the same. It is equally well known that the "money shark," not too harshly named * * * is the usual, if not the only lender. The purpose of the statute therefore * * * is to protect the first from the exactions of the last (*Heller* v. *Lutz*, 164 S. W. 123 (Mo. 1914)).

It follows from these judicial pronouncements of policy that the check-off does not fall within the purposes of the statute under consideration. The Indiana statute, in the words of the court, in *Heller* v. *Lutz* (*supra*) "bears the stamp of beneficence on its face." It would be, indeed, a strained construction to say that an arrangement aiding in the maintenance of peaceful labor relations and redounding to the benefit of the workers would fall within the prohibition of a statute designed to protect the laboring man from "employers, unscrupulous tradesmen, and others who are willing to take advantage of [the workers'] * * * condition."

Not only has the Indiana court indicated that the legislative purpose of the assignment statute was not to prohibit the check-off but the administrative practice of the State indicates that those burdened with the duty of enforcing this statute do not consider that the check-off falls within the statute. The record shows that there are many employers in Indiana who have entered into collective-bargaining agreements embodying the check-off provision. We know of no case in which these companies have been prosecuted by the Department of Inspection, although that Department is by virtue of section 40–203 of Burns, Ind. Stat., 1933, given the duty of enforcing the assignment provision. This negative interpretation, in the absence of an affirmative interpretation, is entitled to weight.

In construing a statute, one must look to the purpose of the statute. In *Strom* v. *Prince*, 279 N. Y. S. 589 (1935), the court held that a statute regulating the assignment of wages "* * * is to be interpreted with the degree of liberality essential to the attainment of the end in view." That end, the court pointed out, was "social service and social justice." The court further emphasized the necessity of considering the true purpose of the statute when it wrote "How can this statute serve its real purpose if we put it in the strait jacket of a too strict or restricted construction?"

The record shows (Transcript, pp. 312, 313, Mediation Panel Hearing) that the Inland Company, at the present time, makes various

deductions from its employees' wages, deductions for "insurance," "merchandise," and "miscellaneous." Further, in Kentucky, Inland has a check-off contract with the United Mine Workers and in that State there is an antiassignment statute similar in principle to the Indiana statute. Thus, it would appear that Inland in practice does not consider a check-off as violating an antiassignment statute.

The contention of counsel that the Selective Service Act of 1940 stands as a bar to the union security clause granted in this case is not entitled to serious consideration for the reason that the decision of the War Labor Board would be binding upon the parties only for the duration of the war. At the close of the war the Selective Service Act contemplates that the returning soldiers shall be reinstated in their jobs in the same status which they held at the time they entered the armed forces. There is nothing in the union maintenance clause granted by the Board in this decision which would be inconsistent with such a reinstatement.

Finally it should be pointed out that if the War Labor Board should ever exceed the powers and jurisdiction vested in it by the Executive order creating it, the President retains the power to check it. The War Labor Board obviously cannot exercise greater powers than the President gives to it, and the final enforcement of the directive orders of the War Labor Board rests with the President. The Board lacks enforcement powers of its own but must turn to the President for final enforcement of its decisions by an exercise of the President's war powers. Attention is called to the fact that the President has indicated very clearly that he expects the parties to all disputes coming before the War Labor Board, to respect and conform to the decisions of the Board.

One case in point is case No. 48 involving a dispute between the *Toledo, Peoria & Western Railroad Co.* and certain railroad brotherhoods. The jurisdiction of the War Labor Board was challenged by the employer. The Board took jurisdiction of the dispute after the National Railway Mediation Board had exhausted its procedures for the settlement of the dispute and so notified the War Labor Board. The Board upon investigation of the merits of the dispute directed the parties to arbitrate their differences. The railroad company refused to abide by the decision of the Board and challenged its jurisdiction.

When the Board became convinced that the company proposed to continue its defiance, the Board recommended to the President that the railroad be seized by the United States Government under the war powers of the President and operated by the Government until such time as the company agreed to comply with the Board's decision. The President approved the Board's recommendation and issued an order under his war powers, placing the railroad under governmental control and operation.

In several other cases where there have been threatened defiances of the Board's directive orders, the recalcitrant party has seen fit to comply with the Board's decision before it became necessary to recommend to the President some such drastic action as was adopted in the

Toledo, Peoria & Western Railroad case. However, the Board has always made clear that in any case of defiance it will urge the exercise of all such war powers as may be necessary in order to secure compliance.

It expressed its position in this regard in case No. 16, by use of the following language:

> This country is at war, and the events in that war to date make clear that we cannot condone the conduct of any employer or labor group in America that places its selfish welfare above the interests of the country * * *. The position of the company leaves the National War Labor Board with no other alternative but to rule that unless the employers involved comply immediately with the decision of the National War Labor Board, their defiance of said Board must be repudiated by patriotic Americans and challenged by whatever forces of Government may be necessary to obtain compliance.

In view of the vital importance of the steel industry to the successful prosecution of the war, it is only fair to make clear to the parties concerned in this dispute that any attempt on their part to stay the carrying out of this decision must be construed by the Board as a challenge to the war powers of the President. In such an event, the Board will not hesitate to recommend that the war powers be exercised to whatever degree may be necessary to meet successfully such a challenge.

Opinion by:

(s) WAYNE L. MORSE.

NATIONAL WAR LABOR BOARD

Case Nos 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.

and

UNITED STEELWORKERS OF AMERICA, CIO, formerly known as STEEL WORKERS ORGANIZING COMMITTEE, CIO

July 16, 1942

SEPARATE CONCURRING OPINION OF EMPLOYER MEMBERS ON THE WAGE ISSUE

In voting with the public members for a 44-cent per day straight across-the-board increase, we did so with mixed feelings. Before this action was taken the $1 a day demand proposed by the labor members of this Board had been voted down 8–4 and the employers' proposal that no wage increase whatsoever be granted had been voted down 8–4. It was apparent that there would have been a three-way split had we employers rejected the middle-of-the-road proposal.

From the beginning our position has been based not only on the findings in the panel's report but upon what we understood was the anti-inflation policy laid down by the President in his April 27 message to Congress.

Let us emphasize here, and reemphasize, that the panel's report contained no recommendations. It gave only findings of fact and this in accordance with instructions given the panel when first appointed. The panel was the servant of the Board, not its master. The Board alone must assume responsibility for all of its directive orders.

The panel found that wages in the steel industry were not inadequate when judged by standards of health and decency. It would be difficult for any unprejudiced party to argue that an hourly rate of 72½ cents for beginners and an average hourly rate of about $1, as well as an average annual income of $1,926.72 (for the year 1941)

was substandard. The companies' ability to pay was not denied, nor were the increased living costs as shown in the panel's report disputed. However, we could not agree with the panel's inference that $1 a day wage increase in the steel industry would not affect wages in other industries.

We felt that the country looked upon the wage determination in these cases as a national issue. It was, in fact, the first instance where the National War Labor Board was called upon to make its first big industry-wide wage determination. Therefore, all the more essential that a decision reached on wages should conform to the seven points set forth by the President on April 27, last.

A careful study and reading of this message made it difficult for the employer members to justify any general across-the-board wage increase in the steel industry. The President in his message had stressed the fact that there must be a drastic reduction in our standard of living. Webster's Collegiate Dictionary, fifth edition, 1941, defines "drastic" as follows: "Act rapidly, violently, harshly; extreme in effect." We reviewed the seven points which the President said would contribute in substantial fashion to the great objective of keeping the cost of living down.

The first point deals with increased taxes, the second with price ceilings, the third with wage stabilization, the fourth with price ceilings on farm products, the fifth with encouraging purchases of war bonds, the sixth with the necessity of rationing in some way, and the seventh with the cutting down of credit and restriction of sales.

The National War Labor Board, so far as it was able, was charged with the duty of stabilizing wages. The President stated:

> In respect to the third item seeking to stabilize remuneration for work, legislation is not required under present circumstances. I believe that stabilizing the cost of living will mean that wages in general can and should be kept at existing scales.

And quoting further:

> Organized labor has voluntarily given up its right to strike during the war. Therefore all stabilization or adjustment of wages will be settled by the War Labor Board machinery which has been generally accepted by industry and labor for the settlement of all disputes.
>
> All strikes are at a minimum. Existing contracts between employers and employees must, in all fairness, be carried out to the expiration date of these contracts. The existing machinery for labor disputes will, of course, continue to give due consideration to inequalities and the elimination of substandards of living. I repeat that all of these processes, now in existence, will work equitably for the overwhelming proportion of all our workers if we can keep the cost of living down and stabilize their remuneration.

Let us stress here that this Board is only empowered to settle such disputes as may come before it. It is plain that if it is the intention to stabilize wages throughout industry that there should be some central body set up to stabilize all wages, not only in the event of disputes, but also where no disputes exist. Government should define a national wage policy and lay down rules to make its policy really effective. We should prevent voluntary general wage increases which all tend to upset the anti-inflation program.

No one can deny that any wage-stabilization program to be effective must go hand in hand with a price-fixing program, a price fixing of all commodities, including farm products. Industry has already accepted price ceilings imposed upon its products; labor must likewise accept a wage ceiling. The only way to stabilize is to stabilize, just as the only way to fix prices is to fix them and the only way to ration is to ration.

We are in for a long, hard struggle on the battle lines across the sea and we must realize, as the President has already pointed out, that the domestic battle line is just as important as any battle line overseas.

This opinion so far contains no explanation of why we employer members of this Board finally voted to accept the proposal of the four public members. Briefly, we did so because we, as four individuals charged with the responsibility of final determination on behalf of industry, concluded the proposal provided a reasonable and justifiable solution. The formula set forth in the directive order is a formula to which we can anchor and, if adhered to (and we have assurances from the public members of the Board that it will be adhered to), should set up a barrier to check wage demands.

We are confident that while it may be thought we have fallen back beyond lines which were outlined in the April 27 message, we have reached a position where this Board can dig in to more effectively face the drastic reduction in our standard of living, which to date most of us have no conception of. To that extent, we are slowing down the speed of wage increases to where a full stop is now in sight.

Industry cannot ask labor to accept stabilization of wages unless it also is prepared to accept a general stabilization of all salaries and bonuses. As to salaries, the President has indicated, and with this we concur, that the practical way to accomplish this is through the income-tax machinery, and we further voice our belief that to bring home national tax consciousness the income-tax base should be broadened.

CONCLUSION

The wage increase ordered, 5½ cents per hour or 44 cents per day, amounts to but $2.20 per 40-hour week or $114.40 per annum.

According to the Bureau of Labor Statistics, the steel industry average of hours worked per week in February 1942 was 40.7. The average weekly earnings in the same month were $40.20.

Will we win a war working less than 41 hours a week in any industry? Let alone the steel industry?

What thinking person can deny a future shortage of manpower and maybe, womanpower, the longer this war for existence continues?

Strange it is that the national effort to spread work and shorten the workweek should climax when the very life of our Nation begs for maximum working hours consistent with health and safety. Yes, even at the expense of overtime wages which by act of Congress require payment of time and a half of regular rates over and above 40

hours worked in any one week, and time and a half above 40 hours simply raises the average hourly rate of actual wages paid. So why fool ourselves? Increasing overtime hours just means increasing the average over-all hourly rate, and as the number of hours above 40 is worked, the over-all average hourly rate mounts and mounts. Those who strive to curb inflation must take this into consideration.

(S) ROGER D. LAPHAM.
(S) E. J. MCMILLAN.
(S) GEORGE H. MEAD.
(S) H. B. HORTON.

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

IN THE MATTER OF

BETHLEHEM STEEL CORPORATION, REPUBLIC STEEL CORPORATION, YOUNGSTOWN SHEET & TUBE CO., INLAND STEEL CO.,

and

UNITED STEELWORKERS OF AMERICA, C. I. O., formerly known as STEEL WORKERS ORGANIZING COMMITTEE, C. I. O.

July 16, 1942

DISSENTING OPINION OF LABOR MEMBERS ON THE WAGE ISSUE

We concur in the Board's directive order on the union security issue, and, with the qualification noted below, in the directive order on the minimum wage guarantee. We dissent from the directive order on the wage issue.

The cold stubborn facts in this proceeding are not in dispute. The union and the four steel corporations initiated their collective bargaining in September 1941. Under normal conditions, collective bargaining agreements would have been consummated within a reasonable period. However, because of the commitment given by the union, along with all organized labor, that there shall be no stoppages of work, the four corporations assumed an uncompromising position regarding the basic issues and a complete deadlock resulted at the end of January 1942. The four cases were thereupon certified to the War Labor Board on February 6, 7 and 10, 1942. A fact-finding panel was designated by this Board to hold hearings and report the facts to the full Board. This panel had the cases under consideration for 4 months and then submitted an exhaustive report of the facts.

In regard to the wage issue, the panel, consisting of the chairman as the public member, the industry member and the labor member, was unanimous in its report. The essential facts contained in this unanimous report are as follows:

(1) The last wage increase obtained by the steelworkers was on April 1, 1941. This wage increase was negotiated between the Union and representatives of the U. S. Steel Corporation, which increase was

then applied throughout the industry. The cost of living for the steelworkers in the steel towns advanced 13.3 percent from April 1941 to March 1942. Over the same interval average weekly earnings in the steel industry decreased a fraction of 1 percent. The panel reports that:

> Weekly earnings are a proper criterion for measuring the impact of rising living costs and therefore (the panel) finds that the buying power of the earnings of the steelworkers has decreased approximately 13.3 percent since the last general change of wage rates in the steel industry.

Furthermore, the panel expressly stated that its finding that the loss in earnings was 13.3 percent was predicated upon the assumption that the price fixing and rationing policies of the Federal Government would prove effective, and it made no allowance for increases in living costs after March 15, 1942. However, as the Chairman of the Board has stated, this decision cannot be written in a vacuum. This Board knows and bases its decision, in part, upon the fact that living costs have advanced several percent since March 15, 1942. It is obviously aware that the Office of Price Administration has permitted increases in the price of gasoline, canned goods, and other commodities, with warnings that further price increases must be anticipated.

The loss in the buying power of the earnings of the steelworkers since the last general change of wage rates in the steel industry will therefore substantially exceed 13.3 percent. The loss in real wages exceeds the $1 per day wage adjustment requested by the union.

(2) The panel finds that in March 1941 the average weekly earnings of steelworkers were 4 percent higher than the average weekly earnings of the workers in all durable goods industries. For the year 1942 the panel finds that the average weekly earnings of the steelworkers will be 11 percent below the average weekly earnings of workers in all durable-goods industries. Thus, for the year 1942, as compared to March 1941, the average weekly earnings for steelworkers will have been reduced 15 percent below the relationship which prevailed in 1941 with the average weekly earnings of workers in durable-goods industries. Through the play of economic forces over a period of years, a more or less consistent pattern had been established in the relationship of wages among these various industries, with earnings of steelworkers being substantially higher than earnings in durable goods. There is now, however, a complete reversal in the relationship, resulting in an inequality, which, if not rectified, may cause a profound dislocation in the labor supply for the steel industry. This inequality exceeds the $1 per day wage adjustment requested by the union.

(3) The panel unanimously finds that: "All four companies are able to pay the requested wage increase of $1 a day."

This finding is predicated upon the earnings of the companies before Federal profit taxes and within the present price structure.

The companies questioned whether earnings before profit taxes are proper criteria of ability to pay and based their claim of inability, or at least of unfairness, on the premise that earnings after profit

taxes are a fairer and more practical guide. To this claim, the panel replied as follows:

> Profit taxes represent the Government's opinion of the extent to which the Government should share in the net profits of business after all other expenses, including labor costs, have been deducted.
>
> To propose that wages should be affected by profit taxes is to propose that labor's return should be conditioned by the Government's impost on industry. The panel believes that this neither can nor should be the case and the panel's findings that the companies are able to pay is not affected from the results flowing from any change of policy relating to profit taxes on the part of the Government * * *.
>
> The panel finds that if a wage increase, otherwise proper, is withheld because of its effect on governmental revenue per se, such withholding would involve an unauthorized tax on the workers.

(4) The primary reason offered in the majority opinion for rejecting the unanimous report of the panel is that to grant the wage adjustment requested by the union would stimulate the inflationary spiral.

This issue is also analyzed by the panel. The panel reports that one of the companies herein, Inland Steel, calculates that the 1942 national income will exceed the 1941 national income by 21 percent and, assuming constant wage rates, that 1942 pay rolls will exceed 1941 pay rolls by only 11 percent. But for the years 1939 to 1941, labor's proportion of the national income remained constant at about 68 to 68½ percent. The panel therefore points out that these estimates indicate a considerable distortion in the distribution of the 1942 national income. The majority concedes that a great distortion in the relative shares of the national income distributed to the various groups must be avoided. But that concession is no more than lip service. This decision negates President Roosevelt's exhortation to "equality of privilege"; this decision can only aggravate privilege at the expense of equality.

The panel's analysis admits that the national pie of consumer goods available for purchases will of course be smaller as a result of the war program. However, the panel eloquently points out that:

> It is clear that the national money income shares importance with the consumer's pie and that although the latter will shrink the former will grow. To ask labor to accept less than its proportionate share of the Nation's money income in order to prevent labor from acquiring too much pie leaves out of account that money has value even when it must be saved.

With this analysis in mind, the labor members of the Board presented a motion that the entire wage adjustment of $1 per day requested by the union be awarded in the form of war bonds. This was voted down. The labor members then presented a motion that 56 cents be paid in war bonds and 44 cents in cash. This also was voted down. The rejections were not based on any theory that war bonds will be quickly redeemed and are therefore tantamount to cash. No such argument can validly be made, for during the period from May 1941 to May 1942, of all the war bonds sold in denominations of less than $100—the bonds that are purchased by wage earners—only about 1 percent were redeemed. The majority insists that a

wage adjustment of $1 per day in cash would be dangerously inflationary and must therefore be refused. But inasmuch as the majority does not, and cannot, contend that granting the wage adjustment of $1 per day in the form of war bonds would be inflationary, its whole argument collapses.

It thus becomes clear that the Board has committed a grave error, the implications of which are far reaching. The Board has, first, virtually rejected the unanimous findings of fact on the wage issue by an eminent and highly competent panel, a panel which painstakingly studied a voluminous and exhaustive record. The panel's findings were not found to be erroneous; they were simply, in large part, ignored. Secondly, the Board has struck a serious blow at the foundations of the collective bargaining process, a process which, in a very real sense, has been built up by "blood, toil, tears, and sweat." That is the result of the Board's refusal to accept April 1, 1941, the date when the last wage increase was obtained in steel industry, as the starting point for its determination of the loss in real wages which the steel worker has sustained. The wage rates then established were obtained by collective bargaining, the fundamental purpose of which is to obtain a fair and equitable distribution between labor and management of the product of their joint efforts. The majority has ignored that principle, without limiting itself even to the war period. It has ignored that principle retroactively in arbitrarily using January 1, 1941, as its starting point for determining, simply, whether or not the cost of living has increased faster than earnings. The net effect is that this Board has established as its so-called stabilization date, not April 27, 1942, as it claims, but January 1, 1941.

The conclusion is inescapable that the majority carried on its deliberations with a fixed intention not to grant more than a token adjustment, selecting those facts which would fit that pattern and rejecting a multitude of facts and cogent arguments which call for a more substantial adjustment. Substituting rhetoric for analysis, it has gone all-out for the inflation thesis, a thesis compounded of conjectures and prophecies, fears and hysteria. It has, in effect, accepted the contention, advanced, among others, by Government agencies which are not charged with the duty of adjusting wage disputes, that there shall be no substantial wage adjustments, no matter how meritorious the case may be, and no matter if that increase can be made in a manner that is concededly not inflationary. In short, the Board has acted, as the Chairman points out, on the assumption that the cost of living will now be stabilized. Obviously and incontestably, now means—at the expense of the workers. To single out the workers for such discriminatory treatment is to risk a serious blow to their morale and thereby dangerously to undermine the war effort.

Granting the union's request would provide a tremendous stimulus to the steelworkers, a powerful incentive to exceed even the extraordinary production records they have so far achieved. Denial of the union's request, under the circumstances of this case, and for the reasons assigned by the majority, gravely jeopardizes continuance of the truly remarkable spirit these workers have thus far demonstrated.

The National War Labor Board has a very strict responsibility to the people of this Nation. This responsibility cannot be discharged by substituting theoretical discourses on putative dangers for consideration of the justice of specific demands of the workers. We conclude that the demand of the union for a dollar a day wage adjustment should be granted.

It follows that we cannot accept without reservation the Board's directive order on the minimum wage guarantee. That order states that each employee shall receive for each day's work not less than 78 cents per hour, etc. This is based on an increase of 5½ cents over the present rate of 72½ cents. Our position is that the increase should be 12½ cents per hour, so that the figure stated in the order would be 85 cents per hour.

(S) Robert J. Watt.
(S) Thomas Kennedy.
(S) George Meany.
(S) R. J. Thomas.

NATIONAL WAR LABOR BOARD

Case Nos. 30, 31, 34, 35

In the Matter of

Bethlehem Steel Corporation, Republic Steel Corporation, Youngstown Sheet and Tube Company, Inland Steel Company

and

United Steelworkers of America, CIO, formerly known as Steelworkers Organizing Committee, CIO

July 16, 1942

DISSENTING OPINION OF EMPLOYER MEMBERS ON THE UNION SECURITY ISSUE

The employer members of the Board dissent from the directive order respecting union security. In this case the Board has ordered a clause to be included in the agreements between the companies and the union providing for the check-off of union dues and initiation fees coupled with maintenance of union membership as a condition of employment for the life of the agreements. Under this clause a 15-day escape period is allowed during which any member of the union who does not wish to remain a member may resign from the union. Such employees are not thereafter bound to maintain their membership or have their dues deducted. All other employees are required to remain members of the union and a check-off of their dues and initiation fees is thereafter a condition of employment for the life of the agreement. By its decision the Board has imposed upon the collective bargaining relationship of these companies and the union conditions to which the companies are unalterably opposed in principle, and has made the companies unwilling collection agencies for the unions. The employer members cannot approve such action by the Board.

THE CHECK-OFF PROVISION

Under the check-off clause employees who have not withdrawn from the union before July 31, must have their dues and initiation fees deducted from their wages without their express consent and despite any objection that they might make to this procedure.

The majority opinion justifies the imposition of a check-off "on the basis of the special facts in this case" and then points out that this unusual order is not to be a precedent in future cases. In our opinion, no analysis of the facts in this case can possibly justify the Board's action. Why is the assurance of union financial security through dues deduction so essential to the war effort? What is the benefit to the individual worker? If the workers were convinced of the benefits to be derived from financial support of the unions no compulsion would be necessary. Nor would it be necessary for the union officials to form dues collection picket lines which are now impeding war production.

Although a guarantee of financial support of the union is now assured, direct financial aid to the country's war effort through the purchase of war bonds is not a matter of compulsion. The reason? Wage earners and other good citizens are ready and willing to give financial support freely and voluntarily without an order from Congress or any Government agency.

MAINTENANCE OF MEMBERSHIP

The provision that union membership must be maintained as a condition of employment is of the type ordered by the Board in the last five cases decided on this issue. The granting of this concession to the union is further evidence of the Board's trend toward a fixed policy on this question as pointed out in the employers' dissenting opinion in case No. 63, Caterpillar Tractor Co.

In attempting to answer the employers in his special concurring opinion in the *Caterpillar case*, Dean Morse said, "No union maintenance at all will be granted when the facts of the case fail to justify it." But what set of facts constitutes justification for no union security? Since June 2, when 3 cases (Robins Dry Dock, Browne & Sharpe, and Nevada Consolidated) were decided, 12 cases (including the present case) involving union security have been decided. In 10 cases maintenance of membership was granted (plus a check-off in the present case). In the other 2 cases provisions for voluntary check-off were ordered, in keeping with the majority recommendations of the panels which had rejected maintenance of membership in each instance.

Despite the varied facts in the 10 cases referred to, the public members of the Board have found justification for ordering maintenance of membership. In the case before us the majority opinion is predicated on the fact that the union is well established and responsible. Yet in the *Ranger Aircraft case* the need for security by the union was based on its loss of members, and in the *Caterpillar Tractor case* the majority opinion, which implied a recognition of the present lack of responsibility on the part of the union, stated "this maintenance of a stable union membership makes for the maintenance of a responsible union leadership * * *." The record clearly indicates that the concern of the public members of the Board has been for the formula by which maintenance of membership is to

be required rather than for the question of whether union security should be granted in any case.

The employer members of the Board who were not opposed in principle to the maintenance-of-membership formula applied in the present case have supported it where they believed the facts warranted union security. But the employer members are unalterably opposed to the Board's present trend toward the application of this or any other formula as a concession to unions in all or most cases coming before it. Continued action of this sort by an agency of the Government has the effect of law, albeit not on the statute books.

In the employers' dissenting opinion in the *Caterpillar Tractor case*, recognition was given to the Board's practice of giving unions maintenance-of-membership clauses as a matter of course wherever union security is requested. The opinion related how a proposal requiring accountability by the union to the Board and the union members was made in that case and was rejected by the public and labor members, the proposal being predicated on the ground that "If a Government agency is to give advantages not granted by legislative action, it should also impose upon the beneficiary certain conditions which Congress has not yet seen fit to require."

Dean Morse in his special concurring opinion charged that the employers' position was highly improper in that they asked the Board to legislate regulations upon unions. Admittedly, the proposal of the employers, if adopted, would have the effect of legal regulation of unions. But its impropriety hinges on the question of whether the imposition of union security in the form of maintenance of membership (or dues check-off) as a matter of regular practice, if not policy, is proper. If it is within the functions and purposes of the War Labor Board to substitute for legislative action concessions that give unions security not contemplated by Congress, then it is proper and fair that action in kind be taken to counterbalance and equalize them.

While opposing the union security proposal made in the present case, it was suggested to the public members of the Board that they include in the directive order the following provisions:

> The union, on or before the effective date of the collective agreements, shall file with the National War Labor Board a copy of its constitution and bylaws, and a list of its present officers, and shall agree that during the lives of the collective agreements:
>
> (*a*) It will file with the Board from time to time, and as promptly as circumstances will permit, notice of any changes in its constitution and bylaws, changes in official personnel of the union, or changes in its dues or initiation fees;
>
> (*b*) It will file with the Board semiannually, a financial statement in such detail as the Board may require.
>
> The reports supplied under paragraphs (*a*) and (*b*) shall become public records. They shall be subject to inspection by any member of the union, by the employer who is a party to a labor dispute with said union certified to this Board, and, under rules to be prescribed by the Board, by any other person, including officers or agents of the Federal Government.
>
> There shall also be incorporated in the collective agreements, an undertaking by the union that it will not during the life of the agreement make, assume, guarantee, repay, or participate in any contribution, subscription, pledge, or other financial obligation to any political party or candidate for public office.

The public members did not accept this suggestion and in no case thus far have they shown any indication of asking a union to comply with some regulatory requirements, although ready to grant to unions many things not provided by statute.

It is the opinion of the employer members of the Board that in time of war no individuals or groups should be permitted to gain advantages at the expense of others or of the country at large. Yet this is happening, not only by permission but by assistance from an agency of the Government. We believe the concession given to the union in this case is not in the best interests of the Nation. We are in a struggle for existence and to win this war selfish interests must be subordinated to the national good.

(S) R. D. LAPHAM.
(S) E. J. MCMILLAN.
(S) GEORGE H. MEAD.
(S) H. B. HORTON

STATEMENT OF ROGER D. LAPHAM, EMPLOYER MEMBER OF THE NATIONAL WAR LABOR BOARD

At this critical stage in the history of management-labor relations, I feel I have a duty to speak out. Having served as an employer member on the National Defense Mediation Board during its brief life, having served as an industry representative on the Industry-Labor Conference held last December, and having served continuously as an employer member of this Board since it was created last January, I have gained some first-hand impressions.

As an individual who has no axe to grind and who has been forced to take it (and not on the chin), rather than hand it out, I dare the following observations of a most general character.

1. Management has plenty to learn in dealing with such spokesmen of labor as they are required to deal with. Management must learn a technique and philosophy now foreign to the great majority in its ranks. A suggested motto for management is "Get wise and face realities."

2. Labor leaders must learn that their high, wide, and fancy decade is about over and that the World War we are now engaged in is really going on.

3. In these days, industry has had taken from it the right to do business as usual. Industry has accepted orders to convert from peace to war production and is doing a grand job complying, but even now, many plants are idle or partially idle because through no fault of management, the Government has shut down operations.

4. Labor leaders still demand privileges and favors because they have given up the right to strike. This is plain bunk, with a capital B. What citizen has a right to strike in a war for his country's existence? Yet stoppages and slow-downs appear to be on the increase and the overworked members of this National War Labor Board are still compelled to take time out because of AFL–CIO jurisdictional disputes. Even now, through no fault of management, production is down or curtailed because so far the top-side leaders of labor have forgotten the pledge given at the management-labor conference last December—which was that all inter-union quarrels in which the AFL and CIO were involved would be abandoned for the war period. Mr. William Green and Mr. Philip Murray cannot place all blame on locals, whether autonomous or not.

5. As an employer member of this Board, I am grateful for the privilege of free speech, one of the things we are at war to retain.

(S) ROGER D. LAPHAM.

JULY 16, 1942.

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